IN THE CHANCERY COURT
FOR MONROE COUNTY, TENNESSEE

COPY

The Town of Tellico Plains, Tennessee Petitioner	)	No. 22,265
vs.	)	
The Tennessee Department of Environment and Conservation and the Tennessee Board of Water Quality, Oil & Gas	)	A JURY TRIAL IS DEMANDED.
Respondents	)	

FILED
MAR 19 2026
TIME 2:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

THE TOWN OF TELLICO PLAINS'
PETITION FOR REVIEW OF A FINAL ADMINISTRATIVE ORDER

Comes now into Court by and through the undersigned counsel, Petitioner The Town of Tellico Plains ("**The Town**"), pursuant to T. C. A. § 4-5-322 herewith petitions this Honorable Court for review of the Final Order entered by the Board of Water Quality, Oil & Gas (the "**Board**") in APD Case No. 04.02-244954A on February 17, 2026.

I. THE NATURE OF THE CASE

The Final Order stems from a TDEC Assessment issued for the following false reason:

> "I have discussed Tellico Plains with Jessica. Even though they are off the hook on this one with EPA, she still wants me to do an order since they really haven't fixed anything."
>
> -- Email from TDEC's Tom Moss dated January 18, 2024, stating TDEC's reason for issuing the Assessment.

Because TDEC was not required to issue the Assessment in this case, it needed a valid discretionary reason to issue the Assessment consistent with law and its own policies. However, TDEC's reason as explained by Mr. Moss in his above email was false. By the date of Mr.

Moss's email, The Town had actually fixed everything, and TDEC knew this. This appeal stands for the proposition that penalties issued based on a lie are void.

II. ORDER SUBJECT TO REVIEW

The Final Order from which review is requested herein is the Final Order of the Tennessee Board of Water Quality, Oil & Gas entered February 17, 2026, and filed with the Tennessee Secretary of State Administrative Procedures Division ("**APD**") on February 19, 2026. The Final Order was docketed as APD Case No. 04.02-244954A. A copy of this Final Order is appended hereto as **Exhibit 1**. The Final Order modifies the original Assessment, which is appended hereto as **Exhibit 2**. The final agency decision is now referred to as the "**Final Order/Modified Assessment**."

In support of this Petition, The Town would prove to the Court the following:

III. THE PARTIES and SERVICE ON THE ATTORNEY GENERAL

1. The Town, your Petitioner herein, is a Tennessee municipal corporation chartered in 1911. The address for The Town is 405 Veterans Memorial Dr., Tellico Plains, Tennessee 37385.

2. Respondent The Tennessee Department of Environment and Conservation (hereinafter "**TDEC**") is an agency of the State of Tennessee created by statute. The address for TDEC is Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee, 37243. Pursuant to Tenn. R. Civ. P. 4.04(6) and 4.04(10) a copy of this Petition, and the summons thereto, may be served on this Respondent via U. S. Mail, registered return receipt or certified return receipt, on Tennessee's Attorney General and Reporter as follows: Attorney General Jonathan Skrmetti, P.O. Box 20207, Nashville, Tennessee, 37202-0207.

where it may be served with process by and through its commissioner David W. Salyers or other authorized agent.

3. Respondent The Board of Water Quality, Oil & Gas (hereinafter the "**Board**") is a board created by statute codified at T. C. A. § 69-3-104. The address for the Board is Davy Crockett Tower, 500 James Robertson Parkway, Nashville, Tennessee 37243. Pursuant to Tenn. R. Civ. P. 4.04(6) and 4.04(10) a copy of this Petition, and the summons thereto, may be served on this Respondent via U. S. Mail, by registered return receipt or certified return receipt, on Tennessee's Attorney General and Reporter as follows: Attorney General Jonathan Skrmetti, P.O. Box 20207, Nashville, Tennessee, 37202-0207.

4. Though not a party, pursuant to T. C. A. § 4-5-322(b)(2), and otherwise as may be required by law, a copy of this Petition, and summons thereto, is being separately served on Tennessee's Attorney General and Reporter as follows: Attorney General Jonathan Skrmetti, P.O. Box 20207, Nashville, Tennessee, 37202-0207.

IV. JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction for this Petition, and the dispute herein, pursuant to the express terms of T. C. A. § 4-5-322(b)(1)(A)(i) which provides that proceedings for judicial review of a contested case from a final agency decision shall be filed in Chancery Court.

6. This Court has personal jurisdiction over the Respondents pursuant to the express terms of T. C. A. § 4-5-322(b)(1)(A)(i).

7. Venue is proper in this Court pursuant to the express terms of T. C. A. § 4-5-322(b)(1)(A)(ii) which provides that venue for a petition seeking judicial review of a contested case from a final agency decision is proper in the Chancery Court nearest to the place of

residence of the person contesting the agency action, or the Chancery Court nearest to the place where the cause of action arose, which in this case is the Chancery Court for Monroe County.

V. THE FACTS

8. Tennessee's Safe Drinking Water Act codified at T. C. A. § 68-221-701 *et. seq.* (the "**SDWA**") includes regulations that apply to persons operating water systems. The Town operates such a water system and therefore is a "person" within the meaning of the SDWA no different than any other private owner of a water system and with all of the same rights a private owner of a water system has.

9. T. C. A. § 68-221-704 sets forth the duties and responsibilities of the Board in its administration of the SDWA.

10. T. C. A. § 68-221-705 sets forth various duties and responsibilities of the commissioner of TDEC in its administration and enforcement of the SDWA.

11. There are two (2) methods by which TDEC may enforce the SDWA: informal enforcement and formal enforcement. A Director's Order and Assessment is a form of formal enforcement. The federal government's Environmental Protection Agency ("**EPA**") requires TDEC to bring a formal enforcement action against a water system when its ETT score reaches 11 or higher. Otherwise, TDEC has discretion to bring a formal enforcement action.

12. In exercising its discretion to bring an assessment, TDEC is to follow its own rules, which are the Uniform Guidance for the Calculation of Civil Penalties dated May 2016 (the "**Uniform Guide**"). Nowhere in the Uniform Guide is there a system of strict-liability whereby for each alleged violation, an assessment automatically issues for a specific amount so that TDEC may have money. TDEC collecting money is not the purpose of the Uniform Guide.

13. According to the Uniform Guide, the purpose of assessments is to accomplish the **behavior modification goals** set forth in the Uniform Guide against the "**more serious violators.**" The Uniform Guide proclaims the behavior modification goals of TDEC's compliance and enforcement programs are as follows:

> The goal of TDEC's compliance assurance and enforcement programs is to attain and maintain a high rate of compliance within the regulated community. This goal is accomplished through comprehensive monitoring and inspection programs and by addressing the **more serious violators** with timely, visible, and effective enforcement actions. A timely and appropriate enforcement action should return the violator to compliance as expeditiously as possible as well as deterring future or potential noncompliance (emphasis added).

Uniform Guide, p. 1, Section I. A copy of the Uniform Guide applicable at the time the Assessment in this matter was issued is appended hereto as **Exhibit 3**.

14. For the purposes and goals of the Uniform Guide, TDEC may issue to a water system a Director's Order and Assessment imposing civil penalties and damages. For such Director's Orders and Assessments, TDEC must follow the Uniform Guide. The Uniform Guide further instructs TDEC that it may divide the civil penalties into two categories: an upfront portion and a contingent portion.

15. The Uniform Guide states that the purposes of the upfront portion and the contingent portion are to:

> remove any known economic benefit which the facility may have enjoyed during the period of non-compliance and **encourage compliance** by having non-compliance cost more than compliance. The purpose of the contingent penalty is to provide an incentive for the respondent to **correct the violations** or take remedial actions within specified timelines (emphasis added).

Therefore, the authorized purposes of civil penalties are to "encourage compliance" when compliance is needed, because compliance has not already happened, and to "correct violations"

because violations are in needed of being corrected because the violations have not already been corrected.

16. On March 19, 2024, TDEC issued a Director's Order and Assessment (hereinafter the "**Assessment**") against The Town. The Assessment was the result of TDEC determining by secret internal process, and without an opportunity for The Town to defend or be heard, that The Town owed TDEC money premised on The Town allegedly having violated the SDWA. A copy of the Assessment is appended hereto as **Exhibit 2**.

17. TDEC's reason for issuing the Assessment is best established by the reason given by TDEC before issuing of the Assessment, which was the statement attributed to Jessica Murphy, Manager of TDEC's Enforcement and Compliance Unit, by Tom Moss on January 18, 2024, two months before the Assessment, which was

> Even though they are off the hook on this one with EPA, she still wants me to do an order since they really haven't fixed anything.

18. The reference in the foregoing email to being "off the hook with EPA" is a reference to The Town's ETT score not being the reason for the Assessment as it had just been confirmed The Town's ETT score was at that time well under 11, and so ETT score could not serve as the reason for the Assessment. The reference to "they really haven't fixed anything" is a refence to the violations itemized in the Assessment.

19. TDEC's reason for issuing the Assessment, that "they really haven't fixed anything" was false because by January 18, 2024, The Town had actually fixed everything.

20. The Assessment was in the amount of $25,530. 00 in total civil penalties and $12.40 in damages. The Assessment endeavored to follow the form of the Uniform Guide. It identified alleged SDWA violations, established civil penalties, claimed damages, designated $5,106.00 as the upfront portion, ordered The Town to perform various behavior modification

tasks over several years, and provided that the balance of the civil penalties (the contingent penalties) of $20,424.00 (or portions thereof) would be due only if The Town failed over the years to do as ordered.

21. Prior to the Final Order/Modified Assessment in this case, the contingent penalty (due only on non-compliance with TDEC's behavior modification orders) was an all-important mainstay of TDEC policy, so much so that before the Final Order in this case, water systems had no choice but to pay the upfront portion and abide by the items ordered and risk having to pay more money than the remaining contingent penalties. Prior to the Final Order/Modified Assessment in this case, A water system, including The Town in this matter, unequivocably could not just pay the entire civil penalty and be free.

22. Pursuant to the SDWA, The Town may either abide by TDEC's Assessment (and TDEC is part of the state's executive branch) or seek a "review" of the Assessment before the Board (also part of the executive branch) pursuant to an administrative law process established by the executive branch according to rules established by the executive branch. Having no other choice to dispute the Assessment, The Town filed a timely appeal seeking "review" before the Board.

23. The SDWA provides that the review of the Assessment before the Board is in two (2) parts. Part one is a proceeding before an administrative law judge ("**ALJ**"), who works for the executive branch, who is to conduct a contested hearing, collect a record (the "**Record of Proceedings**"), conduct a "review," prepare an Initial Order, and along the way rule on various motions and objections.

24. Prior to the contested hearing, TDEC withdrew from prosecution certain alleged SDWA violations. Namely, TDEC withdrew its assertion a violation took place on September

15, 2023 (the "**September 15 Event**"). Basically, it was asserted that on September 15, 2023, the Town failed to dose the drinking water with chlorine. While that happened for approximately one (1) hour, to constitute a SDWA violation, the duration of non-chlorination needed to have been four (4) hours or more. Therefore, this asserted treatment violation was never a violation and TDEC was mistaken for having asserted the violation in the first place, which TDEC self-recognized.

25. Also withdrawn were alleged bacteriological and residual chlorine monitoring violations for August 2023. The Town in fact took the required samples, TDEC should have been provided with these results from the State lab in Knoxville when sampling was completed, but TDEC claimed to not have the data. The Town notified TDEC of these results in September and October of 2023, but TDEC still fined The Town in March of 2024.

26. A contested hearing took place on June 16 and 17, 2025, before ALJ Mark Garland. Judge Garland entered an Initial Order on September 30, 2025. The Initial Order affirmed reduced upfront penalties in the amount of $4,566.00 but set aside the contingent penalties of $18,264.00 as being in violation of due process.

27. Judge Garland denied The Town's Motion for Respondent's Costs and granted TDEC's Motion for Costs.

28. Both The Town and TDEC filed timely appeals to the Board for round two of executive branch review of the Assessment. This round two review before the Board was limited to the Record of Proceedings collected in round one. The round two review before the Board took place February 17, 2026, and a Final Order was entered that same day and filed with APD on February 19, 2026.

29. At TDEC's request, which the Board readily obliged, the Final Order dispenses with the heretofore all-important Uniform Guide upfront/contingent penalty distinction policy. The Final Order/Modified Assessment simply orders The Town to pay TDEC money in the amount of $22,830.00. The Final Order/Modified Assessment provides The Town can save $1,500.00 by submitting a standard operating procedure.

VI. CAUSES OF ACTION

30. The Town is a person aggrieved by a final decision in a contested case within the meaning of T. C. A. § 4-5-322(a).

31. Within the meaning of T. C. A. § 4-5-322(h), the rights of The Town have been prejudiced because the administrative findings, inferences, conclusions and/or decisions of TDEC and/or the Board were (1) in violation of constitutional provisions, (2) arbitrary and capricious, (3) characterized by abuse of discretion and/or a clearly unwarranted exercise of discretion, and (4) unsupported by evidence that is both substantial and material in light of the entire record. These topics are presented in the Counts to this Petition that follow.

COUNT ONE

The Final Order/Modified Assessment is in Violation of Constitutional Provisions and is Therefore Void

32. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

33. The Final Order/Modified Assessment violates constitutional provisions within the meaning of T. C. A. 4-5-322(h)(1), as further discussed in this Count, and as such is void and should be otherwise vacated.

Part One: Separation of Powers

34. On the subject of separation of powers, Article II, Section 1 of Tennessee's Constitution provides the following:

> The powers of the Government shall be **divided** into three distinct departments: the Legislative, Executive, and Judicial (emphasis added).

Tennessee's Constitution at Article II, Section 2, provides that:

> No person or persons belonging to one of these departments shall exercise any of the powers properly belonging to either of the others, except in cases herein directed or permitted.

Tennessee's Constitution also bestows the right to have disputes decided by the state's judicial branch. Tennessee's Constitution at Article I, Section 17, provides, in pertinent part:

> That all courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due process of law ...

35. While premised on a modern Tennessee statute and labeled as penalties, the Assessment was nonetheless a private-rights, common-law cause of action based on an asserted debt.

36. Pursuant to principles of separation of powers, The Town, as an operator of a water system, like every other person, is entitled to have a private-rights, common-law dispute against it decided by the judicial branch and not by the executive branch.[1] T. C. A. § 68-221-713(a); T. C. A. § 68-221-713(b)(1); T. C. A. § 68-221-713(b)(2)(A); T. C. A. § 68-221-713(b)(2)(B); T. C. A. § 68-221-714(a); T. C. A. § 68-221-714(b); T. C. A. § 68-221-714(c); T.

[1] Guidance on this topic is found at SEC v. Jarkesy, 603 U.S. 109 (2024). The administrative law process **struck down** in Jarkesy, which allowed an in-house procedure for secretly determining violations of the Securities and Exchange Act, determining civil penalties, issuing an assessment for those penalties to the alleged violators, limiting the rights of such persons to contest the assessment to administrative, executive branch review, and then further limiting the alleged violator's rights to a limited review by the federal judiciary **is identical to** TDEC's administrative law process in this matter for the collection of a debt.

C. A. § 68-221-714(d); T. C. A. § 4-5-322(a)(1); T. C. A. § 4-5-322(g); T. C. A. § 4-5-322(h); and T. C. A. § 68-221-713(b)(3) (collectively the "**SDWA and APA Statutes at Issue**") wrongfully permit the executive branch of this state to both prosecute and decide The Town's liability to TDEC for money.

37. Because the Board is not part of the judicial branch, it had no subject matter jurisdiction to decide private-rights, common-law claims for a debt against The Town. The contested hearing process forced upon The Town by the SDWA and APA Statutes at Issue violated the foregoing Tennessee separation of powers constitutional provisions, and so the Final Order/Modified Assessment is void and should be otherwise vacated.[2]

38. That the Final Order/Modified Assessment is now appealable to this Chancery Court for limited review is of no help because by the express terms of T. C. A. § 4-5-322 the legislature has wrongfully constrained the judiciary from performing its constitutional duties in deciding disputes.[3] Specifically, this statute wrongfully restricts the issues this Court may consider, the evidence that may be considered, and whether a jury may be demanded.

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[2] For guidance, see Jarkesy, 603 U. S. at 140 ("[Permitting] Congress to concentrate the roles of prosecutor, judge, and jury in the hands of the Executive Branch … is the very opposite of separation of powers that the Constitution demands.")

[3] See Mansell v. Bridgestone Firestone N. Am. Tire, 417 S. W. 3d 393, 403 (Tenn. 2013) ("The legislature can have no constitutional authority to enact [laws] that strike at the very heart of a court's exercise of judicial power … Indeed, a court's constitutional function to independently decide controversies is impaired if it must depend on, or is limited by, another branch of government in determining and evaluating the facts of the controversies it must adjudicate.")

Part Two: Due Process

39. The SDWA and APA Statues at Issue violated The Town's state and federal constitutional due process rights because they are (1) impermissibly vague, unfair, and oppressive, and (2) deprive The Town of the right to defend itself at a meaningful time and in a meaningful manner that would otherwise be present in the state's separate judiciary.

40. Tennessee's Constitution at Article I, Section 8, contains a due process requirement and reads in pertinent part:

> That no man shall be ... deprived of his ... property but by the judgment of his peers or the law of the land.

Tennessee's Constitution also contains a right to have disputes decided by the state's judiciary. Tennessee's Constitution at Article I, Section 17, reads in pertinent part:

> That all courts shall be open; and every man for an injury done him in his lands, goods, person or reputation shall have remedy by due process of law ...

41. At the federal level, the right to due process is contained at the Fifth Amendment to the U. S. Constitution. That Amendment provides, in pertinent part: "No person shall ... be deprived of ... property without due process of law." This Fifth Amendment right to due process is imposed upon the State of Tennessee by virtue of the Fourteenth Amendment to the U. S. Constitution which provides, in pertinent part: "No state shall ... deprive any person of ... property without due process of law."

42. States also may not limit federal constitutional due process rights by virtue of the U. S. Constitution's supremacy clause, which at Article VI, Clause 2, provides in pertinent part:

> This Constitution ... shall be the supreme Law of the Land; and the judges in every State shall be bound thereby, any Thing in the constitution or laws of any State to the contrary notwithstanding.

43. Tennessee regards the relationship between the state's constitutional due process requirement and the federal constitutional due process requirement as identical.[4]

A. Forced Adjudication in the Executive Branch Violates Due Process

44. The SDWA and APA Statutes at Issue violate due process because they purport to give subject matter jurisdiction to the executive branch to adjudicate private-rights, common-law disputes. As more fully discussed in the previous Count, The Town is entitled to have its dispute with TDEC over a debt deciding **in** the state's independent judicial branch by time honored principles **of** the judicial branch and its rules.

B. The Assessment Itself Violated Due Process

45. T. C. A. § 68-221-713(b)(1) permitted TDEC to pre-determine The Town's liability for a debt in secret. This Section afforded The Town no opportunity to be heard, defend itself, or argue correct application of law and policy to facts. This Section provides no criteria for determining the amount of the Assessment. Further, the face of the Assessment presents no meaningful way for the Town to determine the factors that went into TDEC's determination of the dollar amounts.

46. Once the Assessment was issued, The Town was deemed to owe TDEC money unless The Town had the capacity and resources to request review by the Board pursuant to T. C. A. § 68-221-713(b)(2)(A). Otherwise, the Assessment was confessed as a judgment in Chancery

[4] See Mansell v. Bridgestone Firestone N. Am. Tire, 417 S. W. 3d 393, 407 (Tenn. 2013) ("The phrase, 'the law of the land' used in this section of our State Constitution, and the phrase, 'due process of law' used in the [Fifth and Fourteenth Amendments to the United States Constitution], are synonymous phrases meaning one and the same thing ... article I, section 8 has consistently been interpreted as conferring identical due process protections as its federal counterparts. (citations omitted).")

Court pursuant to T. C. A. § 68-221-713(3). Thus, The Town is guilty until it establishes innocence.

47. T. C. A. § 68-221-713(a)(1); T. C. A. § 68-221-713(b)(1); and T. C. A. § 68-221-713(3) violate The Town's due process rights and are unconstitutional because they are oppressive and deny The Town the right to defend at a meaningful time and in a meaningful manner in the separate judicial branch. Specifically, these statutes wrongfully (1) vest the executive branch with the power to decide, in secret, The Town owes it a debt; (2) provide no binding criteria on the executive branch for determining the amount of the debt; (3) fail to inform the Town how the debt was arrived; and (4) place the burden on The Town to dispute the debt or the debt is confessed.

C. The First Review Hearing Requirement Violated Due Process

48. Unless willing to confess judgment, T. C. A. § 68-221-713(b)(2)(A) forced The Town into two (2) rounds of executive branch administrative proceedings as its only dispute option. This statute takes away all the rights The Town would otherwise have to resist wrongfully owing money in a real lawsuit in the judicial branch.

49. In this matter, the first "review" of the Assessment by the executive branch was pursuant to T. C. A. § 68-221-713(b)(2)(A) and T. C. A. 68-221-714(a). These Subsections only permit the ALJ, who works for the executive branch, to conduct an unspecified review of what TDEC has already decided, make a record, and enter an Initial Order.

50. There is no specified criteria for ALJ review of the Assessment. The existence of review criteria establishes relevance of information submitted, arguments to be made, and an understanding of whether one is being treated fairly. A statute that requires The Town to participate in a review, with no criteria for said review, is oppressive, unfair, and absurd.

51. While the ALJ first review is called a contested hearing, and in making a record the ALJ may use as "guidance" state-court rules of procedure, that is not the same as The Town having the full rights it would otherwise have to defend itself in the state's separate judiciary. For example, in the contested hearing there is no Tenn. R. Civ. P. 38 opportunity to demand a jury trial; there are no pleadings; and the ALJ's decisions on procedure, evidence, motions, and law are not subject to judicial review.

52. T. C. A. § 68-221-713(b)(2)(A) and T. C. A. § 68-221-714(a) violate The Town's due process rights and are unconstitutional because they are oppressive and deny The Town the right to defend at a meaningful time and in a meaningful manner before an independent finder of fact and judge. Specifically, these statutes (1) strip away the rights The Town would otherwise have to defend itself in the judicial branch, including trial by jury; (2) vest the executive branch with the power to decide whether The Town owes the executive branch a debt; (3) provide no criteria for the review, and so they are intolerably vague; and (4) deprive The Town of any right of appeal as to ALJ decisions on procedure, evidence, and law.

D. The Second Review Hearing Requirement Violated Due Process

53. Following the entry of the Initial Order at the end of the round-one review, unless willing to confess judgment, T. C. A. § 68-221-714(c) next forced The Town to seek a second "review" before the Board. For this second review by the executive branch, once again there are no stated criteria for the review of the earlier review, other than such review is limited to the record of the ALJ's earlier review. One of the appointed Board members tasked with reviewing TDEC's actions, so as to give The Town a fair chance, and the one designated as Chairman of

the Board to preside over Board matters so as to give The Town fair process, is none other than the Commissioner of TDEC or its designee.[5]

54. From this second review, the Board enters a Final Order which becomes "final" and subject to execution unless appealed pursuant to T. C. A. § 68-221-714(e).

55. T. C. A. § 68-221-714(c) violates The Town's due process rights and is unconstitutional because it is oppressive and denies The Town the right to defend at a meaningful time and in a meaningful manner before an independent finder of fact and judge. Specifically, this statute (1) strips away the rights The Town would otherwise have to defend itself in the judicial branch, including trial by jury; (2) vests the executive branch with the power to decide whether The Town owes the executive branch a debt; (3) designates the Commissioner of TDEC Chairman of the Board to preside over the round-two review where TDEC is a party to the dispute; (4) provides no criteria for the round-two review, and so it is intolerably vague; and (5) deprives The Town of any right of appeal as to ALJ/Board decisions on procedure, evidence, and law.

E. The Limitation on Judicial Review Violates Due Process

56. Following the Final Order entered by the Board, The Town can appeal the Final Order to the Chancery Court pursuant to T. C. A. § 68-221-714(e) and APA statute T. C. A. § 4-5-322(a)(1) for a very limited review of the two (2) prior reviews upon just the five (5) categories mentioned at T. C. A. § 4-5-322(h) and, pursuant to T. C. A. § 4-5-322(g), without a jury.

57. The foregoing statutes violate The Town's due process rights and are unconstitutional because they are oppressive and deny The Town the right to defend at a

[5] See, T. C. A. 68-221-703(2) and T. C. A. § 69-3-104(a)(1)(A).

meaningful time and in a meaningful manner. Specifically, these statutes (1) strip away the rights The Town would otherwise have to defend itself in the judicial branch; (2) create a presumption the Final Order is correct because the Chancery Court can only set it aside if The Town can demonstrate one of the five criteria for setting aside the Final Order apply (i. e. The Town is guilty until it proves its innocence); (3) have no provision for appealing prior evidentiary, procedural, and legal rulings made by the ALJ or the Board; (4) deprive The Town of its Tenn. R. Civ. P. 38 right to a jury trial; and (5) deprive the judicial branch from receiving evidence as the Chancery Court is limited to the Record of Proceedings created by the ALJ, based on what the ALJ decided should be in the record.

F. The Final Order/Modified Assessment is Void

58. Separation of powers entitles individuals to an independent judge who will preside over that trial, and due process means, in this context, judicial due process. The SDWA and APA Statutes at Issue provide neither. The statutes do not provide a meaningful process, and minimum due process requires the state's separate judicial branch to decide whether The Town owes TDEC a debt.

59. These SDWA and APA Statutes at Issue violate The Town's due process rights and are therefore unconstitutional. Since the Final Order/Modified Assessment is the result of unconstitutional statutes, violates principles of separation of powers, and violates The Town's due process rights, the Assessment is void and should otherwise be vacated.

Part Three: Right to a Jury Trial

60. The SDWA and APA Statutes at Issue violate The Town's Tennessee Constitutional right to a trial by jury.

61. Article I, § 6, of Tennessee's Constitution provides, in pertinent part: "That the right of trial by jury shall remain inviolate." Article VI, § 14 provides, in pertinent part: "No fine shall be laid on any citizen of this state that shall exceed fifty dollars, unless it shall be assessed by a jury of his peers ..."

62. The TDEC Assessment is a claim for money (specifically a debt) for more than fifty dollars ($50.00), and a claim for money is a common-law claim, and Tennessee's Constitution entitles The Town to have its dispute with TDEC on this debt adjudicated by the judicial branch with a jury.[6]

63. The SDWA and APA Statutes at Issue violate The Town's federal constitutional right to a jury trial. The Seventh Amendment to the Federal Constitution provides, in pertinent part: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved ..." The Fourteenth Amendment to the Federal Constitution provides, in pertinent part: " ... nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."[7]

64. Because the SDWA and APA Statutes at Issue deprive The Town of its right to a jury trial, the Final Order/Modified Assessment is void and should otherwise be vacated.

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[6] For Guidance, see Jarkesy, 603 U. S. at 122 ("Actions by Government to recover civil penalties under statutory provisions," we explained, "historically had been viewed **as [a] type of action in debt** requiring trial by jury" (internal citations omitted, emphasis added).)

[7] Over one hundred years ago, the U. S. Supreme Court in Minneapolis & St. Louis R. Co. v. Bombolis, 241 U. S. 211 (1916) decided that the Fourteenth Amendment did not impose the Seventh Amendment right to a jury trial upon the States. However, Justice Gorsuch's concurring opinion in Thomas v. Humboldt Cnty., 2025 U. S. LEXIS 3843* (2025) indicates Bombolis is overdue for reversal.

Part Four: Notice Pursuant to T. C. A. § 28-18-101

65. To the extent required, filed contemporaneously herewith is a Notice pursuant to T. C. A. § 28-18-101(b)(1) to the presiding judge of the judicial district, Jerri S. Bryant, wherein this case is filed that a Petition has been filed that may meet the requirements of T. C. A. § 28-18-101(a). A copy of this Notice is provided to the said presiding judge separately.

COUNT TWO

TDEC's Decision to Issue the Assessment was Arbitrary or Capricious

66. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

67. TDEC's decision to issue the Assessment was arbitrary or capricious within the meaning of T. C. A. 4-5-322(h)(4), as further discussed in this Count, and as such it is void.

68. Because TDEC was not required to issue the Assessment, TDEC had discretion to issue the Assessment. This means TDEC needed a proper reason to issue the Assessment that was not arbitrary or capricious.

69. TDEC's reason for issuing the Assessment was the reason given by TDEC before issuing of the Assessment, which was the statement attributed to Jessica Murphy, Manager of TDEC's Enforcement and Compliance Unit, by Tom Moss on January 18, 2024, two months before the Assessment, which was

> Even though they are off the hook on this one with EPA, she still wants me to do an order since they really haven't fixed anything.

70. The reference to being "off the hook with EPA" is a reference to The Town's ETT score not being the reason for the Assessment as it had just been confirmed The Town's ETT score was at that time well under 11, and so ETT score could not serve as the reason. The reference to "they really haven't fixed anything" is a refence to the violations itemized in the

Assessment, which statement by Ms. Murphy was false because by January 18, 2024, The Town had actually fixed everything.

71. Arbitrary means:

> of, relating to, or involving a determination without consideration of or regard for facts and circumstances, fixed rules, or procedure. (of a judicial decision) founded on prejudice or preference rather than on reason or fact.

Capricious means:

> (of a person) characterized by or guided by unpredictable or impulsive behavior; likely to change one's mind suddenly or to behave in unexpected ways. (of a decree) contrary to the evidence or established rules of law.

72. TDEC based its decision to issue the Assessment on a lie and such action is therefore "without consideration of or regard for facts and circumstances, fixed rules, or procedure" and is otherwise "characterized by or guided by unpredictable or impulsive behavior." Accordingly, TDEC's decision to issue the Assessment premised on a lie was an arbitrary or capricious decision, and as such the Final Order/Modified Assessment is void and should otherwise be vacated.

COUNT THREE

The Board's Decision to Issue the Final Order/Modified Assessment was Arbitrary or Capricious

73. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

74. The Board's decision to issue the Final Order/Modified Assessment was arbitrary or capricious within the meaning of T. C. A. 4-5-322(h)(4), as further discussed in this Count, and as such it is void.

75. Because The Board was not required to issue the Final Order/Modified Assessment, The Board had discretion to issue the Final Order/Modified Assessment. This

means The Board needed a proper reason to issue the Assessment that was not arbitrary or capricious.

76. The clear and convincing weight and/or preponderance of the evidence in the Record of Proceedings was that the reason for the Assessment was the statement described above attributed to Jessica Murphy, Manager of TDEC's Enforcement and Compliance Unit, by Tom Moss on January 18, 2024, that The Town really had not fixed anything. The so-called reasons cited by the Board at paragraph 24 of the Final Order were in fact not the reasons, The Town's truthful ETT truthful never fluctuated above 11, and The Town's truthful sanitary survey score was above the threshold whereby enforcement is considered.

77. The Board based its decree on a lie and as such this action was "founded on prejudice or preference rather than on reason of fact" and is "contrary to the evidence or established rules of law." Accordingly, The Board's decision to issue the Final Order/Modified Assessment premised on a lie was an arbitrary or capricious decision, and as such the Final Order/Modified Assessment is void and should otherwise be vacated.

COUNT FOUR

The Modified Assessment is Itself Arbitrary and Capricious

78. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

79. To the extent TDEC and/or the Board can issue civil penalties, the penalty calculation must be appropriate, incompliance with law and policy, consistent with due process, and not otherwise arbitrary and capricious.

80. The Board affirmed the dollar amounts for the Assessment based on the rationale that it was what the TDEC witnesses said, and only TDEC witnesses could testify about calculating the dollar amounts.

81. Further, the dollar amounts of the Assessment including the application of multipliers, by design, are incapable of objective review. However, if a process is incapable of objective scrutiny that violates due process and can be no better than just an arbitrary and capricious result within the meaning of T. C. A. 4-5-322(h)(4).

COUNT FIVE

The Final Order/Modified Assessment is the Product of Abuse of Discretion and/or Clearly Unwarranted Exercise of Discretion

82. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

83. The Final Order/Modified Assessment is the product of abuse of discretion and/or clearly unwarranted exercise of discretion within the meaning of T. C. A. 4-5-322(h)(4), as further discussed in this Count, and as such it is void and should otherwise be vacated.

84. Because TDEC was not required to issue the Assessment, TDEC had discretion to issue the Assessment. For a proper exercise of that discretion, in addition to not basing its reason on a lie, as discussed above, TDEC needed to follow its own rules for issuing assessments, which rules are the Uniform Guide.

85. Based on the Uniform Guide, there is a five-part test for determining authorized purposes for discretionary assessments. The assessments (1) are for the more serious violators; (2) must be timely; (3) must be appropriate; (4) should return the violator to compliance as expeditiously as possible; and (5) should deter future or potential non-compliance.

86. In this matter, TDEC failed to prove The Town was a serious violator of the SDWA. In fact, The Town was not a serious violator.

87. TDEC failed to prove the Assessment was timely. The Assessment, in fact, was not timely. The various separate SDWA violations occurred between July and October 2023. All but one violation was fixed by September 2023. All violations were fixed by November 2023. The Assessment five (5) months later was untimely and served no purpose.

88. The Final Order/Modified Assessment is completely contrary to the Uniform Guide. The Final Order/Modified Assessment abandons the altruistic goals of the Uniform Guide to foster behavior modification and instead seeks only money.

89. The Assessment did not return The Town to compliance. The Final Order/Modified Assessment does not return The Town to compliance. All violations were fixed by November 2023. The Assessment some five (5) months later served no purpose. The Final Order/Modified Assessment, well over two years after all violations were fixed serves no purpose. The violations cited in the Assessment were one-time events, and by the time of the Assessment March 19, 2024, no fine was required to be imposed on The Town to motivate it to comply because it had already complied.

90. TDEC failed to prove The Town needed a financial penalty as deterrence against future SDWA compliance.

91. Issuing penalties in the Final Order/Modified Assessment for The Town not having certified operators was an abuse of discretion and/or clearly unwarranted exercise of discretion. As will be shown at trial, TDEC's assertion that The Town did not obtain its replacement certified operators timely, in light of lenient time periods to obtain replacement operators afforded by T. C. A. § 68-221-912, the difficulty The Town suffered in obtaining

replacement operators, TDEC's other lenient policies, and the Record of Proceedings was wholly unwarranted and misplaced and should be set aside.

92. As will be shown at trial, the determination of the dollar amounts of the penalties, the application of multipliers, and the failure to apply mitigating reductions was an abuse of discretion and/or clearly unwarranted exercise of discretion.

COUNT SIX

The Final Order/Modified Assessment is Unsupported by Evidence that is Both Substantial and Material

93. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

94. For the reasons set forth above, and the reasons presented in this Court, the Final Order/Modified Assessment is unsupported by evidence that is both substantial and material in light of the entire record, and it should be set aside and otherwise vacated.

A. The Reason for the Assessment

95. As mentioned above, there was no substantial and material evidence, in the light of the entire record, supporting the Board's finding at paragraph 24 of the Final Order for the reasons for TDEC issuing the Assessment. The clear and convincing evidence was that The Town's truthful ETT score never fluctuated above 11, and The Town's truthful sanitary survey score was above the threshold whereby enforcement is considered. The clear and convincing and/or preponderance of the evidence was that TDEC's reason for issuing the Assessment was Jessica Murphy's false reason set forth above.

B. Compliance with the Uniform Guide

96. As mentioned above, there was no substantial and material evidence, in the light of the entire record, supporting the conclusion that the Assessment and/or the Final

Order/Modified Assessment were issued consistent with TDEC's own rules, the Uniform Guide. The clear and convincing and/or preponderance of the evidence was that The Town was not a serious violator of the SDWA and that the Assessment and/or Final Order/Modified Assessment The Town were not timely, were not for an authorized purpose for discretionary assessments, served no compliance goal, and served no deterrence goal.

97. As mentioned above, the Final Order/Modified Assessment is just an order for The Town to pay TDEC money, as such it is unsupported by substantial and material evidence in the light of the entire record, is contrary to the Uniform Guide, and is void and should otherwise be vacated.

C. Other Aspects of the Final Order/Modified Assessment

98. There are further and additional aspects of the Final Order/Modified Assessment unsupported by substantial and material evidence, in the light of the entire record, to be shown at trial.

D. Respondent's Costs

99. As set forth in Count Nine below, the denial of The Town's Respondent's Costs was unsupported by evidence that is both substantial and material in light of the entire record, and this decision should be reversed and The Town awarded its Respondent's Costs.

E. TDEC's Costs

100. As set forth in Count Ten below, the granting of TDEC's Costs was unsupported by evidence that is both substantial and material in light of the entire record, and this decision should be reversed and the award to TDEC of these costs vacated.

COUNT SEVEN

The Summary Judgment Entered was in Error and Should be Set Aside

101. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

102. To the extent this issue is required to be raised, the ALJ erred in granting TDEC's Motion for Summary Judgment. While perhaps certain events could be regarded as having occurred, as a matter of undisputed fact, it was in error to make the leap that the existence of certain facts created "liability" for The Town to owe TDEC any amount of money. As such, the Order granting TDEC's Motion for Summary Judgment should be set aside.

COUNT EIGHT

The Town is Entitled to Recover Its Respondent's Costs

103. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

104. To the extent any argument previously presented in The Town's Appeal Brief filed January 12, 2026, for the Board review hearing has not been made in this Petition, The Town does not waive such arguments and expressly adopts and incorporates them herein by reference.

COUNT NINE

Arguments in The Town's Appeal Brief for the Appeal to the Board

105. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

106. Pursuant to T. C. A. § 4-5-325(a) The Town prays that it be awarded its Respondent's Costs against TDEC. In support, The Town would show the following:

107. The Final Order/Modified Assessment is not warranted within the meaning of Subsection (a)(1)(A) of part 325. "Warranted" means "justified" and "being what is called for by accepted standards of right and wrong." "Not warranted" therefore means "unjustified, unfair, undue, unjust, and unreasonable." As set forth above, The Assessment was issued for a false reason and as such was not warranted by "accepted standards of right and wrong." As set forth above, the Final Order/Modified Assessment fails to comply with the Uniform Guide and as such is not warranted.

108. The Assessment was brought to harass The Town and/or cause it needless expense within the meaning of Subsection (a)(1)(B) of part 325. Harassment means "words, conduct, or action that, being directed at a specific person, annoys, alarms ... and serves no legitimate purpose; purposeful vexation. As set forth above, the Assessment was issued for a false reason and state action for a false reason "serves no legitimate purpose."

109. As a direct, proximate, and foreseeable result of TDEC's wrongful actions, The Town incurred the following costs "because of the notice" within the meaning of T. C. A. § 4-5-325 as follows:

(a) Administrative Time

110. TDEC issuing the Assessment needlessly consumed the time of The Town's Utilities Manager Troy Taubert, which time could have been spent more beneficially for The Town on other activities. The Town's claim for this category of Respondent's Costs is $4,123.44 and is supported by the Second Affidavit of Troy Taubert and the Second Affidavit of Mayor Marilyn Parker filed in the Record of Proceedings.

(b) Attorney's Fees

111. TDEC issuing the Assessment required The Town to hire an attorney. Unless The Town was to roll over and accept the Assessment, The Town needed to have its attorney provide a proper defense. In doing so, The Town incurred $100,376.00 in attorney's fees allocated to the defense against TDEC which The Town has paid. Support for this amount is provided in the Second Declaration of Brian Quist previously filed in the Record of Proceedings.

(c) Shipping, Court Reporter, and Transcript Expenses

112. TDEC issuing the Assessment required The Town to incur $8,237.14 in shipping expenses, court reporter fees, and transcript costs which The Town has paid. Support for this amount is provided as **Attachment 2** to the Second Declaration of Brian Quist previously filed in the Record of Proceedings.

113. The Town further seeks its Respondent's Costs incurred for the time of it filing its earlier Motion for Respondent's Costs through the disposition of this case.

COUNT TEN

The Award to TDEC its Costs Should be Vacated

114. All of the foregoing paragraphs of this Petition are incorporated herein by reference.

115. Paragraph 5 on page 16 of the Final Order awards TDEC costs. This award is in error and should be set aside. First, because The Town is entitled to the relief requested by this Petition, TDEC is not entitled to be paid anything. Second, these are not TDEC's costs; these are costs of the Administrative Procedures Division.

116. TDEC's reasons for its costs are (1) entitlement pursuant to Tenn. Comp. R. & Regs. 1360-04-01-.16 and (2) entitlement pursuant to Tenn. R. Civ. P. 54.04. However, Tenn.

Comp. R. & Regs. 1360-04-01-.16 does not provide an independent entitlement to costs. Further, Tenn. R. Civ. P. 54.04 cannot be used to require The Town to pay TDEC for costs of the Administrative Procedures Division.

117. The ALJ's ruling, adopted by the Board, that Rule 54.04 concerning state court discretionary costs cannot be a basis for awarding TDEC its supposed costs.

VII. REQUESTED RELIEF

WHEREFORE, having fully and completely pled sufficient grounds for relief, The Town prays it be granted the following relief:

1. That this Court declare the SDWA and APA Statutes at Issue to be unconstitutional, and as a result, the Final Order/Modified Assessment is deemed void and otherwise vacated;

2. In the alternative, that this Court find the Assessment was issued by TDEC for an arbitrary and/or capricious reason, and as a result the Final Order/Modified Assessment on which it was based is deemed void and otherwise vacated;

3. In the alternative, that this Court find the Final Order/Modified Assessment was issued by the Board for an arbitrary and/or capricious reason, and as a result the said Final Order/Modified Assessment is deemed void and otherwise vacated;

4. In the alternative, that this Court find the Assessment and/or Final Order/Modified Assessment is itself arbitrary and/or capricious, and as a result the Final Order/Modified Assessment is deemed void and otherwise vacated;

5. In the alternative, that this Court find the Assessment and/or Final Order/Modified Assessment was issued as a result of abuse of discretion and/or clearly unwarranted discretion, and as a result the Final Order/Modified Assessment is deemed void and otherwise vacated;

6. In the alternative, that this Court find the Final Order/Modified Assessment is unsupported by evidence that is both substantial and material in the light of the entire record, and as a result the Final Order/Modified Assessment is deemed void and other vacated;

7. In the alternative, that this Court and jury independently determine any amount that The Town might owe TDEC;

8. That The Town be awarded its Respondent's Costs and that it be permitted to supplement its supporting materials for attorney's fees and costs incurred after the earlier filing of its Motion for Respondent's Costs through the date of final disposition of this matter;

9. That the award to TDEC of its Costs be vacated;

10. That The Town be awarded discretionary interest prejudgment pursuant to T. C. A. § 47-14-123 on any amounts owed to it;

11. That The Town be awarded its discretionary costs;

12. That The Town be awarded such further and general relief to which it may be entitled, with the clerk's bill of costs taxed to Respondent's;

13. Such appropriate orders issued from this Court pursuant to T. C. A. § 4-5-322(d) ordering Respondents to transmit to this Court the original or certified copy of the entire record of proceedings under review;

14. A twelve member jury to try the issues joined; and

15. The terms of the Final Order be stayed pursuant to T. C. A. § 4-5-322(e) until final disposition of this case. Pursuant to T. C. A. § 4-5-322(e) The Town has requested, or will soon be requesting, a stay of the Final Order from the Board and/or TDEC.

THIS IS THE FIRST APPLICATION FOR EXTRAORDINARY RELIEF IN THIS MATTER

VIII. VERIFICATION

The undersigned, **Troy Taubert**, does make oath as follows:

I am the Utilities Manager for The Town of Tellico Plains. I am over eighteen years old, not under any disability, competent to give this testimony, and I am personally familiar with the facts set forth herein. I swear and affirm the foregoing facts set forth in this Petition are true, and that The Town is entitled to the relief sought. This is the first application for extraordinary relief, and this is the first application for a petition for judicial review of the Final Order of the agency in this case.

STATE OF Tennessee)
COUNTY OF Monroe)

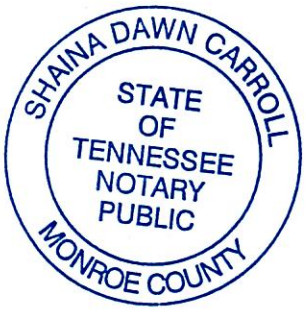
Personally appeared before me, the undersigned, a Notary Public in and for the aforesaid State and County, **Troy Taubert**, who, after being first duly sworn according to law, acknowledged himself to be the Utilities Manager for the Town of Tellico Plains and did make oath and affirm that he has read the foregoing Petition, and that the facts in the Petition are true and correct, and that he has otherwise made the foregoing oath in support of this Petition.

By: _____
Name: Troy Taubert
Title: Utilities Manager

Sworn to and subscribed before me on this the 19th day of March, 2026.

_____
NOTARY PUBLIC

My commission expires: 10/24/28



Respectfully submitted this ___19th_____ day of March, 2026.

Brian C. Quist BPR #012762
Peter P. Amoruso, BPR # 040982
QUIST, FITZPATRICK & JARRARD, PLLC
800 South Gay Street, Suite 2121
Knoxville, Tennessee 37929-2121
(865) 524-1873 Ext. 207
bcquist@QFJlaw.com
Attorneys for Respondent
Town of Tellico Plains

[A bond for the Clerk's Bill of Costs is filed separately herewith]

CERTIFICATE OF SERVICE

I hereby certify that a true and exact copy of the foregoing document has been served upon the following persons or entities in the manner indicated on this _19th ___ day of March 2026.

Via Email Samantha.Buller-Young@tn.gov

Samantha Buller-Young
Assistant Counsel
Department of Environment and Conservation
Knoxville Field Office
3711 Middlebrook Pike
Knoxville, TN 37921

Via email Emily.vann@tn.gov

Emily B. Vann
Senior Associate Counsel
Office of the General Counsel
Davy Crockett Tower, 5th floor
500 James Robertson Parkway
Nashville, TN 37243

Brian Quist, BPR 012762

COPY

FILED
MAR 19 2026
TIME 2:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

EXHIBIT 1

Petition

The Town of Tellico Plains
v.
TDEC and the Board of Water Quality, Oil & Gas

STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER WPC24-0062**
	)	
DEPARTMENT OF ENVIRONMENT	)	
AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	**DOCKET NUMBER 04.30-255676J**
	)	
TOWN OF TELLICO PLAINS	)	
TENNESSEE,	)	
Respondent.	)	**Judge Claudia Padfield**

NOTICE OF FILING

The Department of Environment and Conservation, by and through the undersigned counsel, hereby provides notice that the Board of Water Quality, Oil, and Gas met on February 17, 2026, and held a review hearing in *TDEC v. Tellico Plains*, APD Docket Number 04.02-244954A. The Board voted to adopt the attached Final Order, which affirms in part and modifies in part the Initial Order entered by Administrative Judge Mark Garland on September 30, 2025.

Respectfully submitted on February 19, 2026.

/s/ Samantha Buller-Young
Samantha Buller-Young, BPR # 040466
Assistant Counsel
Department of Environment and Conservation
Knoxville Environmental Field Office
3711 Middlebrook Pike, Suite 101
Knoxville, Tennessee 37921
Telephone: (865) 440-8303
Samantha.Buller-Young@tn.gov

TN SOS-APD Thu, Feb 19, 2026 12:45 PM : 1 of 19 pages filed

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing Notice of Filing has been sent to the following by email and certified mail on February 19, 2026:

Brian C. Quist
Peter Amoruso
Quist, Fitzpatrick & Jarrard, PLLC 800
South Gay Street
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Knoxville, TN 37929
bcquist@QFJlaw.com
p. 865 524.1873 ext. 207
f. 865 525.2440

Attorneys for the Respondent.

/s/ Samantha Buller-Young
Samantha Buller-Young
Assistant Counsel

TN SOS-APD Thu, Feb 19, 2026 12:45 PM : 2 of 19 pages filed

STATE OF TENNESSEE
BOARD OF WATER QUALITY, OIL, AND GAS

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	**CASE NUMBER DWS23-0190**
	)	
DEPARTMENT OF ENVIRONMENT	)	
AND CONSERVATION,	)	
Petitioner,	)	
	)	
v.	)	
	)	
TOWN OF TELLICO PLAINS	)	**DOCKET NUMBER 04.02-244954A**
TENNESSEE,	)	**JUDGE MICHAEL BEGLEY**
Respondent.	)	

FINAL ORDER

This matter came before the Board of Water Quality, Oil, and Gas ("Board") on February 17, 2026, with Administrative Judge Michael Begley assigned by the Secretary of State, Administrative Procedures Division ("APD") sitting with the Board. The petitioner, Department of Environment and Conservation ("Department"), was represented by attorneys Samantha Buller-Young and Emily B. Vann. The respondent, Town of Tellico Plains ("Town"), was represented by attorney Brian C. Quist.

The contested case hearing on this matter was heard *de novo* on June 16-17, 2025, in Knoxville, Tennessee, before Administrative Judge Mark Garland, assigned by APD to sit on behalf of the Board, upon the Town's appeal of Director's Order DWS23-0190 ("Director's Order"). The Director's Order was an administrative enforcement order issued by the Department's Division of Water Resources ("Division") for violations of the Safe Drinking Water Act, Tenn. Code Ann. §§ 68-221-701 to -721 ("SDWA").

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Judge Garland issued an Initial Order on September 30, 2025, affirming in part and modifying in part the civil penalty assessed in the Director's Order ("Initial Order"). Following the entry of the Initial Order, the parties each filed motions for costs. On October 15, 2025, Judge Garland entered an order denying the Town's motion for costs and attorney's fees. On October 21, 2025, Judge Garland entered an order granting the Department's motion for costs in this matter.

Both parties timely appealed the Initial Order to the Board. The Town also appealed both the denial of its motion for costs and attorney's fees and Judge Garland's award of the Department's costs. The Initial Order and Certified Technical Record were provided to the Board on January 5, 2026. The Department filed its appeal brief on January 9, 2026, and the Town late-filed its brief on January 12, 2026. The Department and the Town each filed response briefs on January 30, 2026. The parties' briefs were provided to the Board on February 3, 2026.

The Board heard arguments from the parties on February 17, 2026. After considering the arguments of the parties and the Certified Technical Record as a whole, the Board affirms the Initial Order in part and modifies the Initial Order in part as further described below. The Board also affirms Judge Garland's denial of the Town's request for costs and attorney's fees and his award of the Department's costs.

The Board's review of the Initial Order is limited to the record and therefore the Board makes no additional findings of facts, but provides the below summary based on the Findings of Fact from the Initial Order:

TN SOS-APD Thu, Feb 19, 2026 12:45 PM : 4 of 19 pages filed

FINDINGS OF FACT

1. The Town owns and operates a drinking water system, identification number TN0000693. (R. at 828–29.)[1] The type and frequency of monitoring that a public water system must perform under the rules depend on the category of public water system, population served, and type of water source. The Town's drinking water system is a community water system as defined in the Board's rules.[2] (R. at 829.) The system obtains its water from eight wells that are classified as not under the direct influence of surface water, commonly referred to as "true groundwater." *Id.* When compared to surface water, groundwater has the least potential for contamination at its source. However, potential harm is increased for a community water system because it serves more people, thereby increasing the risk of exposure to contaminants.

2. The Town has two water treatment plants: the Main Plant[3] and the Rural Vale Plant. (R. at 1098, Tr. IV, 503:11-20.) At the time of the violations outlined in the Director's Order, the Town's system served approximately 2,443 connections and a population of approximately 6,132 people. (R. at 1461, ¶ 3.)

3. The Town is required to have certified operators in four areas: water treatment (WT1), distribution (DS1), wastewater treatment (STP-2), and collections (CS-1). (R. at 1463, ¶ 4.)

[1] Citations to the Certified Technical Record are identified by the initial "R" followed by the blue Bates reference number located on the lower left corner of each page. Citations to the contested case hearing transcript will also list the transcript volume (I-IV) and the specific transcript page number and line numbers, for convenience. Citations to Hearing Exhibits will be indicated by "Hr'g Ex." or "Hr'g. Exs." for multiple exhibits.

[2] The Board has promulgated rules governing the operation of public water systems. TENN. COMP. R. & REGS. 0400-45-01 *et seq.* ("the Rules").

[3] The Technical Record contains references uses both "the Main Plant and "the Town Plant" to identify this facility. For clarity this order will exclusively use "the Main Plant" to identify the facility.

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4. On July 14, 2023, the Town's certified operator, Mr. Robert Patty, informed Mr. Brad Antone, an Environmental Manager with the Department, that Mr. Patty's last day of employment with the Town would be July 28, 2023. (R. at 891–92, Tr. Vol. I, 72:24-73:15.)

5. Mr. Patty held all four operator certifications for the Town. During the Town's 2019 sanitary survey, the Department advised the Town of the risks associated with having a single operator holding all four certifications. (R. at 940, Tr. Vol. II, 161:11-162:17; 947–48, Tr. Vol. II, 192:15-193:10.)

6. On July 17, 2023, Mr. Antone mailed Mayor Marilyn Parker a letter reminding her of the Town's obligation to maintain certified operators.[4] The letter included a list of certified operators and advised Mayor Parker that a Certified Operators Agreement form, along with a letter identifying the Town's new wastewater system operator, "must be completed and returned to [the Department] by August 30, 2023." (R. at 892, Tr. Vol. I, 73:16; 1093, Tr. Vol. IV, 485:19-486:12; Hr'g Ex. 10.)

7. The Town released Mr. Patty from his employment effective July 19, 2023. Mayor Parker informed the Department of Mr. Pattty's departure on July 19, 2023. (R. at 893, Tr. Vol. I, 78:21-25; 938, Tr. Vol. II, 154:22-155:5; 944–45, Tr. Vol. II, 180:14-181:19; 1090, Tr. Vol. IV, 471:1-473:3; Hr'g Ex. 18.)

8. On July 21, 2023, Mr. Antone sent a revised letter to Mayor Parker advising her that a Certified Operators Agreement form and a letter identifying the Town's new wastewater system operator "must be completed and returned to the [Department] by August 19, 2023." (R. at 893, Tr. Vol. I, 78:13-18; 893, Tr. Vol. I, 79:1-5; Hr'g Ex. 11.)

[4] Mr. Antone also tried to email the letter and attachments to Mayor Parker, but sent the email to an incorrect email address, which delayed the Town's receipt of the information.

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9. In mid-August 2023, the Town experienced a significant rainfall event that flooded the Main Plant and the wastewater plant. The Main Plant shut down due to a loss of water pressure, and the wastewater plant overflowed, causing raw, untreated sewage to run into the Tellico River. The Town was without certified operators at this time. This hindered the Town's ability to take required bacteriological samples and other steps required to get the drinking water and wastewater systems back to normal operating conditions. (R. at 893–94, Tr. Vol. I, 79:11-84:9; 894, Tr. Vol. I, 81:4-84:9; 895, Tr. Vol. I, 85:5-86:11; Hr'g Ex. 12.)

10. On August 15, 2023, Department staff conducted a site visit and assisted the Town by providing, among other things, guidance on issuing a boil water notice and how to take proper bacteriological and chlorine residual samples. (R. at 896, Tr. Vol. I, 89:4-23.)

11. On August 22, 2023, Mr. Antone sent Mayor Parker a Notice of Violation (NOV). The NOV advised that the August 19, 2023, deadline for the Town to identify a new operator had passed and required the Town to complete and return a Certified Operators Agreement form and a letter identifying the Town's new wastewater system operator to the Department by September 21, 2023, to avoid further enforcement action. (R. at 894–95, Tr. I, 84:10-92:7; Hr'g Ex. 12-13.)

12. On September 7, 2023, the Town hired Mr. Troy Taubert as its water treatment operator. (Hr'g Ex. 5, p. 2; Hr'g Ex. 37.)

13. On September 26, 2023, the Department sent correspondence to the Town advising that it would conduct a sanitary survey of the Town's system on September 28, 2023. The Department also advised that the Town it needed to complete a Certified Operator Agreement form for the drinking water system operator (distribution operator) and returned it to the Department by October 25, 2023, to avoid further enforcement action, including the assessment of civil penalties. (Hr'g Ex. 14.)

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14. On or about November 28, 2023, the Town hired Mr. Jonathan Dixon as its distribution operator. By this time, the Town had been without a distribution operator for just over four months. (Hr'g Ex. 23.)

15. Mr. Erich Webber, Environmental Technical Advisor for the Department's drinking water program, spoke with Mr. Taubert shortly after he took over as the Town's water treatment operator. They discussed an issue with the Town's continuous chlorine analyzer (CCA), and Mr. Webber advised Mr. Taubert not to submit numbers on the CCA data submittals if he did not have an actual record with data points. (R. at 951, Tr. II, 206:13-208:14.)

16. Mr. Taubert submitted the Town's July and August 2023 Disinfectant Monitoring Reports in blank, containing no data. (Hr'g Exs. 26, 27.)

17. At Mr. Taubert's request, Ms. Jenna Williams, an Environmental Specialist II with the Department, along with other Departmental staff, conducted the requested sanitary survey on September 28-29, 2023. (R. at 958, Tr. Vol. II, 234:1-16; 959, Tr. Vol. II, 237:21-239:10; 959, Tr. Vol. II, 240:1-15; Hr'g Ex. 29.) During the sanitary survey, Ms. Williams determined that the Town only collected six of seven required bacteriological samples and six of seven required disinfectant residual samples in July of 2023. (R. at 961, Tr. Vol. II, 245:8-246:7; Hr'g Ex. 29.) She also observed that CCA data was not available for certain days in July and August of 2023, and learned that while the Rural Vale CCA was malfunctioning, the Town did not take grab samples every four hours as required in the event of a monitoring or recording equipment breakdown, as no grab sample results were available. (R. at 961, Tr. Vol. II, 246:8-247:24; Hr'g Ex. 29.)

18. The Town did not repair the Rural Vale CCA within 14 days as required by the rules. (R. at 953, Tr. II, 215:1-24; 1117, Tr. IV, 581:15-23; Hr'g Exs. 28, 29.)

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19. On December 11, 2023, the Division sent a Sanitary Survey Report and NOV to the Town, which detailed the deficiencies identified during the sanitary survey. (Hr'g Ex. 29.)

20. The Department uses the Environmental Protection Agency's (EPA's) Enforcement Tracking Tool (ETT) to track the compliance of every water system in the state. Each water system earns an ETT score based on its history of compliance with both federal and state environmental regulations during a five-year period. The ETT score fluctuates as older violations drop off and new violations are added. At all times relevant in this matter, the Town's ETT score ranged from 7 to 19. (R. at 878–80, Tr. Vol. I, 22:22-28:16; 878, Tr. Vol. I, 17:21-22:21; Hr'g Exs. 1, 2.)

21. Consistent with EPA policy, the Department prioritizes formal enforcement actions against water systems whose ETT score reaches 11 or higher. (R. at 1019, Tr. Vol. III, 348:17-349:2; Hr'g Ex. 3.)

22. The EPA policy does not preclude the Department from engaging in formal enforcement actions against a water system with an ETT score that falls below 11. (R. at 962–63, Tr. Vol. II, 250:6-254:25; 1025–27, Tr. Vol. III, 376:7-380:3.)

23. In December 2023, Mr. Tom Moss, an Environmental Manager in the Department's Compliance and Enforcement Unit, drafted the Director's Order. As part of the order-writing process, Mr. Moss reviewed the case file, including the most recent sanitary survey, and calculated civil penalties using the Department's Uniform Guide for Calculation of Civil Penalties ("the Uniform Policy"). (R. at 972, Tr. Vol. II, 290:8-16; 972, Tr. Vol. II, 292:4-18; 973–74, Tr. Vol. II, 294:2-298:20; 1019, Tr. Vol. III, 348:20-349:24; 1020, Tr. Vol. III, 353:13-354:9; Hr'g Exs. 33, 34, 35.)

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24. The Department proceeded to formal enforcement for several reasons, including the fact that the Town was without a certified water distribution operator for almost four months, the Town's sanitary survey identified several deficiencies, and the Town's ETT score had fluctuated above 11. (R. at 970, Tr. Vol. II, 284:21-285:5; 1020–21, Tr. Vol. III, 354:1-357:8.)

25. On March 21, 2024, the Department issued the Director's Order to the Town. (Hr'g Ex. 33.)

26. The Town took only six of the seven required bacteriological samples for July 2023. For this violation, the Department properly assessed a civil penalty of $1,000 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

27. The Town took only six of the seven required disinfectant (chlorine) samples in the distribution system for July 2023. For this violation, the Department properly assessed a civil penalty of $100 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

28. The Town failed to report chlorine residuals for July and August 2023. For this violation, the Department properly assessed a total civil penalty of $3,200 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

29. The Town failed to report that the Rural Vale CCA was inoperable. For this violation, the Department properly assessed a civil penalty of $4,000 in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

30. The Town failed to continuously monitor the chlorine residual leaving the water treatment plant when it failed to collect grab samples in July and August of 2023. The Town also and continuously monitor the chlorine residual leaving the water treatment plant when it failed to repair the CCA within 14 days. For this violation, the Department properly assessed a total civil

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penalty of $4,800 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

31. The Town failed to have a certified water treatment operator for August 2023 and a certified distribution operator for August, September, and October 2023. For this violation, the Department properly assessed a total civil penalty of $4,800 ($1,600 for each month) in accordance with its statutory authority and the Uniform Policy. (Hr'g Ex. 34.)

32. Pursuant to the Uniform Policy, the Department also properly assessed an upward adjustment of $3,330 for the Town's failure to have certified operators. (Hr'g Ex. 34.)

33. The record demonstrates that the Department properly calculated the civil penalties for the violations at issue in this case. Departmental witnesses and Mr. Taubert testified, providing opposing opinions on an appropriate civil penalty amount. The Department's witnesses have years of training and experience in evaluating violations and calculating civil penalties across the state, while Mr. Taubert does not. Therefore, the testimony of the Department's witnesses regarding the amount and calculation of the civil penalties is more credible and is entitled to more weight than the opinions offered by Mr. Taubert. (R. at 895–96, Tr. Vol. I, 87:6-89:3; 896, Tr. Vol. I, 89:4-90:4; 896–97, Tr. Vol. I, 91:13-93:18; 897, Tr. Vol. I, 94:13-96:8; 905, Tr. Vol. I, 127:21-128:19; 907, Tr. Vol. I, 133:13-136:3; 907–08, Tr. Vol. I., 136:16-138:14; 950, Tr. Vol. II, 201:15-204:7; 953, Tr. Vol. II, 213:9-214:17; 961, Tr. Vol. II, 247:6-24; Hr'g Exs. 13, 14, 17, 29, 33, 34, 35.)

34. The Department is not pursuing the $12.40 damages amount assessed in the Director's Order, nor is it pursuing civil penalties for the following violations:

a. Failure to take seven bacteriological samples in August of 2023 (one of two violations alleged in paragraph X of the Order).

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b. Failure to take seven disinfectant residual samples in August of 2023 (one of two violations alleged in paragraph XI of the Order).

c. Failure to report the chlorine residual leaving the plant on September 15, 2023 (one of three violations alleged in paragraph XII of the Order).

(R. at 834–35; 1014–15, Tr. Vol. III 331: 2-332:20; 1027, Tr. Vol. III, 383:5-13; 1029–30, Tr. Vol. III, 388:11-392:15; Hr'g Exs. 33, 34.)

35. Consistent with the Uniform Policy, the Director's Order divided the total civil penalty into an upfront portion and a remainder portion. After removing the violations and damages no longer being pursued, the total calculated civil penalty is $22,830. Of that amount, the upfront portion is $4,566 (20%), and the remainder portion is $18,264. (R. at 1468–69.)

ANALYSIS AND CONCLUSIONS OF LAW

The Board has jurisdiction to hear and render a decision in this contested case proceeding under Tenn. Code Ann. §§ 68-221-712(a) and -713(b)(2)(A). The Department, as the petitioner, bears the burden of proof in this case. *See* Order Determining Certain Questions of Law entered on February 19, 2025. The conclusions of law set forth in the Order Granting Partial Summary Judgment are incorporated herein by reference. Those conclusions found that the Department met its burden of proof on the issue of liability and that the violations at issue occurred.

The Town first asserts that the Director's Order is invalid and therefore should be dismissed, and no penalty imposed, because the Town's ETT score fell below 11. The EPA policy only creates a prioritization for formal enforcement actions against water systems whose ETT score reaches 11 or higher. (Hr'g Ex. 3.) The SWDA provides the Department with statutory enforcement authority, and the EPA policy does not preclude the Department from pursuing enforcement against a water system for any violation of federal and state environmental

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regulations. *See* TENN. CODE ANN. §§ 68-221-702, -705(1), (2), (8) ("bring suit in the name of the Department for any violation of this part, rules and regulations of the board"), (9) ("assess civil penalties for violations of any provision of this part or any rule, regulation, or standard"), (10) ("issue orders as may be necessary to secure compliance"), (11) ("investigate any alleged or apparent violation of this part and take any action authorized hereunder as the commissioner deems necessary to enforce these sanctions") (emphasis added). Moreover, the EPA policy itself does not specifically preclude the use of formal enforcement actions against a water system with an ETT score below 11. The EPA policy sets a bar that the Department cannot fall below, but it does not preclude the Department from going above that bar to enforce state law.[5]

Because the Town committed the violations as assessed in the Director's Order, *see* R. at 836, the remaining question is whether the Department established by a preponderance of the evidence that the assessment of civil penalties imposed in the Director's Order is appropriate under the SDWA and not otherwise arbitrary and capricious. The SDWA establishes a range for civil penalties of "not less than fifty dollars ($50.00) nor more than five thousand dollars ($5,000) per day for each day of violation." TENN. CODE ANN. § 68-221-713(a)(1). The civil penalties assessed for each violation in this case fall within this range. Therefore, they do not violate the SDWA.[6]

The Department uses the Uniform Policy across all of its statutory schemes in which civil penalties are calculated. The Uniform Policy requires the Department to determine 1) the gravity

[5] In other words, the EPA policy on which the Town relies does not preempt state law. "[T]he only agency actions that can determine the answer to the pre-emption question, of course, are agency actions taken pursuant to the [federal agency's] congressionally delegated authority. The Supremacy Clause grants "supreme" status only to the "the Laws of the United States." And pre-emption takes place "'only when and if [the federal agency] is acting within the scope of its congressionally delegated authority, ... for an agency literally has no power to act, let alone pre-empt the validly enacted legislation of a sovereign State, unless and until Congress confers power upon it.'" *Merck Sharp & Dohme Corp. v. Albrecht*, 587 U.S. 299, 315 (2019) (internal citations omitted). *See also Kemp v. Medtronic, Inc.*, 231 F.3d 216, 222 (6th Cir. 2000) (noting that "the states' police powers relating to public health and safety are not preempted by federal law unless Congress' intent to do so is clearly expressed.")

[6] In fact, many of the penalties are significantly less than they could have been. The maximum penalties for the violations at issue could have exceeded one hundred thousand dollars.

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or percentage of the deviation, 2) whether a multi-day component should be included, 3) whether any adjustments should be made to the initial penalty, and 4) whether the cost of any economic benefit gained through non-compliance should be included.

To determine the gravity of the deviation of a SDWA violation, the Department first establishes which of the statutory factors set forth in TENN. CODE ANN. § 68-221-713(d) apply. (Hr'g Ex. 35 at 5, 8.) The evidence shows that the Department identified the harm or potential harm to the public, the deterrent effect of the civil penalty, and the effort put forth by the Town to remedy the violations as the statutory factors relevant to the assessed civil penalty.

After determining which statutory factors apply, the Department then determines whether the harm to public health or the environment is major, moderate, or minor and whether the deviation from the regulatory requirement is major, moderate, or minor. The evidence shows that the Department identified harms or potential harms to public health associated with each violation and properly determined whether those harms or potential harms, and the deviation from each regulatory requirement, were major, moderate, or minor. (R. at 1028, Tr. Vol. III, 385:22-386:5; 1028, Tr. Vol. III, 387:7-20; 1029, Tr. Vol. III, 391:8-19; 1030, Tr. Vol. III, 392:22-393:3; Hr'g Exs. 33, 34, 35.) As noted above, the Department's witnesses have years of training and experience in evaluating violations and calculating civil penalties across the state, and the fact that the Town can think of worse potential harm that could possibly occur does not discredit the determinations made by the Department.[7]. The credible testimony of the Department's witnesses and the facts presented support the conclusion that the Department properly determined the harm or potential harm to public health and the deviation from the regulatory requirement for each violation. Thus,

[7] At the hearing, the Town suggested that a violation resulting in illness or death would constitute a major harm and a major deviation, and that the Town's violations in this case cannot be major because they do not rise to that level.

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the Department properly determined the gravity or percentage of each deviation and properly applied its determinations to the penalty matrix.

The Department exercised its discretion and did not apply the Uniform Policy's multi-day factor in this case, however, the Department did adjust the overall civil penalty upward for the Town's failure to have certified operators. The Department sent multiple 30-day notice letters to remind the Town that the hiring deadline had passed and remind it of the risk of formal enforcement. The Town was put on notice in 2019 about the risks associated with having a single operator who holds all four certifications and the evidence demonstrates that the Town failed to mitigate those risks. The evidence further shows that it is highly unusual for a water system to go 90 days without a certified distribution operator. The Department could have imposed an economic benefit penalty based on the Town's cost savings of not having a distribution operator on staff but chose not to do so. Considering the foregoing, the penalty adjustment for failure to have certified operators was appropriate.

Adminstrative Judge Garland properly determined that "[u]ltimately, the selection of the exact penalty amount ... is based upon the discretion and judgment of the case manager and the Division Director in any given case." (Hr'g Ex. 35 at 9.) The Department did not abuse its discretion or make an arbitrary or capricious calculation of the civil penalties in this case. Accordingly, the Department has proven by a preponderance of the evidence that its civil penalty calculation is appropriate and in compliance with applicable law and policy.

The SDWA empowers the Department to "issue orders as may be necessary to secure compliance with [the SDWA], as well as the rules and regulations adopted pursuant to [the SDWA]." TENN. CODE ANN. § 68-221-705(10). The Director's Order contained compliance action requirements, enumerated in paragraph XVI, Items (3) through (7). (Hr'g Ex. 35.) Items (4)

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through (7) made certain deferred portions of the correctly calculated total civil penalty due upon the existence of future violations. (Initial Order, R. at 1476.). Because the Town is already obligated to comply with these requirements, the Department's remedy is to issue a new enforcement order based on those future facts, which includes an appropriate civil penalty sufficient to deter that noncompliance (Initial Order, R. at 1469, 1474.).

However, the Initial Order incorrectly held that the deferred portions of the total civil penalty, assessed for the Town's past violations, tied to compliance actions (4) through (7) were void. The Initial Order correctly held that the Town committed the violations outlined in the Director's Order and that the Department properly assessed a total civil penalty for those past violations. If the total civil penalty is correct, then the appropriate outcome if corrective actions (4) through (7) fall away is that the assessed civil penalty amount becomes due and owing in full. The divvying up of the total assessed penalty among the corrective action requirements was merely a way for the Town to avoid payment of those portions upon completion of the corresponding action. If the action cannot be completed, payment must be made. The Initial Order reduction of the total civil penalty for the Town's past violations of the SDWA to $4,566 was inconsistent with the Initial Order's holding that "the total civil penalty calculation is reduced to $22,830" and therefore Judge Garland simply erred in voiding the deferred portions of the civil penalty along with the corrective actions.

One of the corrective actions required by the Director's Order differs in structure from all the other corrective actions. Item (3) required the Town to "submit standard operating procedures (SOP) for the water treatment plant" within 60 days. (Not. of Hr'g, Ex. A, R. at 16–17.) Unlike the other corrective actions, which are structured in the negative ("don't commit a violation"), this corrective action imposes an affirmative action (submit SOPs) that must be taken within a definite

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timeframe (60 days). This type of corrective action is precisely the kind that is contemplated by the SDWA, because it is geared toward securing compliance with the SDWA and its implementing rules. Item (3) is a valid compliance action item, and its deferred penalty of ($1,500) could still be triggered. The Initial Order erred in voiding Item (3).

The Department used its enforcement discretion to encourage compliance by deferring most of the civil penalty. Because the overall civil penalty calculation is correct and the Town cannot perform the compliance action Items (4) through (7) as they are void, the deferred portions of the civil penalty tied to those items are instead due and owing.

CONCLUSIONS OF LAW

1. The Department has proven by a preponderance of the evidence that its civil penalty calculation is appropriate, in compliance with applicable law and policy, and not otherwise arbitrary or capricious. *See* TENN. CODE ANN. §§ 68-221-713(a)(1), (d)(1), and the Uniform Policy. Because the Department is no longer pursuing three of the violations and is not seeking to collect the $12.40 in damages, the total civil penalty calculation is reduced to $22,830.

2. The Initial Order erred in voiding paragraph XVI, Item (3) of Director's Order DWS23-0190, because Item (3) is a valid corrective action that does not offend due process principles.

3. Because compliance action Items (4) through (7) of Director's Order DWS23-0190 are voided, the Town is responsible for payment of $21,330 of the total civil penalty within 30 days of the entry of this Final Order. However, because Item (3) is affirmed, the remainder amount of $1,500 is not due unless the Town fails to submit standard operating procedures for the water treatment plant, which shall include grab sampling as required with breakdown of equipment,

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including the maximum allowable timeframe grab sampling is allowed, within 60 days of the Board's order becoming final.

4. Adminstrative Judge Garland properly denied the Town its costs and attorney's fees in this matter as outlined in his October 15, 2025, order.

5. Adminstrative Judge Garland properly awarded the Department its costs in this matter of $5,340.00 as outlined in his October 21, 2025, order.

REASONS FOR DECISION

For the reasons set forth above, the Initial Order is **AFFIRMED IN PART** and **MODIFIED IN PART**. Additionally, the award of the Department's cost in this matter of $5,340.00 is **AFFIRMED**. The policy reason for affirming and modifying these orders is that they comply with the laws of the State of Tennessee and are consistent with the purpose of the SDWA to protect the right of the people of Tennessee to an adequate quality and quantity of drinking water.

Entered this the 17TH day of Feb., 2026.

Dodd Galbreath, Chair
Board of Water Quality, Oil, and Gas

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RECONSIDERATION ADMINISTRATIVE RELIEF AND JUDICIAL REVIEW

Within fifteen (15) days after the entry of an initial or final order, a party may file a petition to the Board for reconsideration of the Final Order. If no action is taken within twenty (20) days of filing of the petition with the Board, it is deemed denied. TENN. CODE ANN. § 4-5-317.

In addition, a party may petition the Board for a stay of the Final Order within seven (7) days after the effective date of the Final Order. TENN CODE ANN. § 4-5-316.

Finally, a party may seek judicial review by filing a petition for review with the chancery court nearest to the place of residence of the person contesting the agency action or alternatively, at the person's discretion, in the chancery court nearest to the place where the cause of action arose, or in the chancery court of Davidson County within sixty (60) days after the effective date of the Final Order. A petition for reconsideration does not act to extend the sixty (60) day period; however, if the petition is granted, then the sixty (60) day period is tolled and a new sixty (60) day period commences from the effective date of the Final Order disposing of the petition. TENN. CODE ANN. § 4-5-322.

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EXHIBIT 2

Petition

The Town of Tellico Plains
v.
TDEC and the Board of Water Quality, Oil & Gas

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT AND CONSERVATION

IN THE MATTER OF:	)	**DIVISION OF WATER RESOURCES**
	)	
	)	
TOWN OF TELLICO PLAINS,	)	
	)	
	)	
	)	
	)	
	)	
RESPONDENT.	)	**CASE NO. DWS23-0190**

DIRECTOR'S ORDER AND ASSESSMENT

NOW COMES Jennifer Dodd, Director of the Tennessee Division of Water Resources, and states:

PARTIES

I.

Jennifer Dodd is the duly appointed Director of the Tennessee Division of Water Resources ("Division") by the Commissioner of the Tennessee Department of Environment and Conservation ("Department"). The Commissioner is responsible for administering the Tennessee Safe Drinking Water Act ("Act"), Tenn. Code Ann. §§ 68-221-701 to -720.

II.

The Town of Tellico Plains (the "Respondent") owns, operates, and/or controls a community public water system (the "System") existing in Monroe County, Tennessee. The Public Water System Identification (PWSID) number is TN0000693. Process may be served on the Respondent through the Honorable Marylin Parker, Mayor, Town of Tellico Plains, at 405 Veterans Memorial Drive, Tellico Plains, Tennessee 37385.

JURISDICTION

III.

Whenever the Commissioner has reason to believe that a violation of the Act has occurred, is occurring, or is about to occur, the Commissioner may order corrective action be taken. Tenn. Code Ann. §§ 68-221-705 and 68-221-712. Further, the Commissioner has authority to assess civil penalties against any violator of the Act. Tenn. Code Ann. §§ 68-221-705 and 68-221-713. The Commissioner also has authority to assess damages incurred by the State resulting from the violation. Tenn. Code Ann. § 68-221-713. The Board of Water Quality, Oil and Gas has promulgated rules governing operation of public water systems. Tenn. Comp. R. & Regs. Chapter .0400-45-01. The Commissioner may delegate to the Director any of the powers, duties, and responsibilities of the Commissioner under the Act, Tenn. Code Ann. § 68-221-705(12), and has delegated such authority to Jennifer Dodd ("Director").

IV.

The Respondent is a "person" under the Act. Tenn. Code Ann. § 68-221-703(17). The Respondent is a "supplier of water" under the Act, because it owns, operates, and/or controls a "public water system." Tenn. Code Ann. §§ 68-221-703(22) and 68-221-703(19). The System is a "community water system." Tenn. Comp. R. & Regs. 0400-45-01-.04(11).

FACTS

V.

The Respondent obtains its water from eight wells that are classified as not under the direct influence of surface water, commonly referred to as "true groundwater." The Respondent serves 3,154 connections and a population of approximately 7,759 persons.

VI.

Division personnel performed a file review and determined that the Respondent had taken 6 of the required 7 bacteriological samples in the monthly monitoring period ending July 31, 2023, and failed to monitor for free chlorine residual as a result of the missed bacteriological sample. Division personnel also determined that the Respondent failed to report the disinfectant residual leaving the water treatment plant for the July 2023 monitoring period. The Division issued notification letters to the Respondent for the violations during the July 2023 monitoring period on September 14, 2023.

VII.

Division personnel performed a file review and determined that the Respondent had taken 6 of the required 7 bacteriological samples in monthly monitoring period ending August 31, 2023, and failed to monitor for free chlorine residual as a result of the missed bacteriological sample. Division personnel also determined that the Respondent failed to report the disinfectant residual leaving the water treatment plant for the August 2023 monitoring period. The Division issued a notification letter to the Respondent on October 16, 2023, for the failure to monitor disinfectant residual leaving the water treatment plant. The Division issued a notification letter to the Respondent on October 23, 2023, for the failure to perform the bacteriological monitoring.

VIII.

Division personnel performed a sanitary survey from September 28 – 29, 2023, and determined that the System's continuous chlorine analyzer had not been working properly during the months of July and August 2023. The Respondent failed to repair the continuous chlorine analyzer within 14 days. The Respondent failed to monitor for chlorine residual on September 15,

2023, due to a failure in the continuous chlorine analyzer. The Respondent also failed to perform grab samples to compensate for the failure in continuous monitoring.

Division personnel also determined during the sanitary survey that the Respondent was in violation for not having a certified water treatment plant operator and a certified distribution system operator for an extended period. On July 21, 2023, the Division issued correspondence to the Respondent notifying the Respondent that a water treatment operator and distribution system operator needed to be obtained by August 19, 2023, as the former operator who held both licenses was no longer employed by the Respondent. The Division issued an NOV to the Respondent on August 22, 2023, for the failure to have certified operators for water treatment and distribution. Following the issuance of the NOV, the Division was informed that a water treatment operator was in the process of being hired and was subsequently hired about September 2023. However, the Respondent had not yet hired a distribution operator. The Division issued a letter to the Respondent on September 26, 2023, notifying the Respondent that a distribution system operator must be hired. The Division was notified by the Respondent in November 2023 that a distribution operator had been hired. The Division issued a letter on December 11, 2023, notifying the Respondent of the violations determined during the sanitary survey.

IX.

The Division incurred $12.40 in damages while investigating these violations.

VIOLATIONS

X.

By taking only six of seven bacteriological samples for the monthly compliance periods ending July 31, 2023, and August 31, 2023, the Respondent violated Rule 0400-45-01-.41(7)(b), which states, in pertinent part:

> (b) Monitoring frequency for total coliforms. The monitoring frequency for total coliforms is based on the population served by the system, as follows:
>
> Total Coliform Monitoring Frequency for
> Public Water Systems Serving More than 1,000 People

Population Served[1]	Minimum number of samples per month
1,001 to 2,500	2
2,501 to 3,300	3
3,301 to 4,100	4
4,101 to 4,900	5
4,901 to 5,800	6
5,801 to 6,700	7
6,701 to 7,600	8
7,601 to 8,500	9
...	...

[1]The Respondent is required to take 9 bacteriological samples monthly starting February 1, 2024, based on an increase in population from the November 2021 sanitary survey and the September 2023 sanitary survey.

XI.

By failing to take disinfectant residuals in the distribution system in July and August of 2023, the Respondent violated Rule 0400-45-01-.36(6)(c)1.(i), which states, in pertinent part:

> (i) Routine monitoring... Beginning April 1, 2016, community and non-transient non-community water systems that use chlorine or chloramines must measure the residual disinfectant level in the distribution system at the same point in the distribution system and at the same time as total coliforms are sampled, as specified paragraphs (4) through (8) of Rule 0400-45-01-.41...

XII.

By failing to report the chlorine residual leaving the water plant for the monthly compliance periods ending July 31, 2023, August 31, 2023, and for the date of September 15, 2023, the Respondent has violated Rule 0400-45-01-.40(4)(c)1.(i), which states, in pertinent part:

> (i) A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in subparagraph (10)(i) of Rule 0400-45-01-.14 at a location approved by the Department and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Department-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. . . .

XIII.

By failing to perform grab sampling for chlorine residual when the continuous chlorine analyzer was malfunctioning during the months of July and August, as well as on September 15, 2023, and by failing to repair the malfunctioning continuous chlorine analyzer within 14 days, the Respondent violated Rule 0400-45-40(4)(c), which states, in pertinent part:

> (c) Monitoring Requirements
>
> 1. A ground water system subject to the requirements of subparagraph (a), part (b)1. or part (b)2. of this paragraph must monitor the effectiveness and reliability of the treatment for that ground water source before or at the first customer as follows:
>
> (i) A ground water system that serves greater than 3,300 people must continuously monitor the residual disinfectant concentration using analytical methods specified in subparagraph (10)(i) of Rule 0400-45-01-.14 at a location approved by the Department and must record the lowest residual disinfectant concentration each day that water from the ground water source is served to the public. The ground water system must maintain the Department-determined residual disinfectant concentration every day the ground water system serves water from the ground water source to the public. If there is a failure in the continuous monitoring equipment, the ground water system must conduct grab sampling every four hours until the continuous monitoring equipment is returned to service. The system must

resume continuous residual disinfectant monitoring within 14 days. . . .

XIV.

By failing to notify the Division that the chlorine analyzer was inoperable, the Respondent violated Rule 0400-45-01-.40(6), which states, in pertinent part:

(6) Reporting and Recordkeeping for Ground Water Systems
(a) In addition to the requirements of Rule 0400-45-01-.18, a ground water system regulated under this rule must provide the following information to the Department:
1. A ground water system conducting compliance monitoring under subparagraphs (4)(b) and (c) of this rule must notify the Department any time the system fails to meet any Department-specified requirements including, but not limited to, minimum residual disinfectant concentration, membrane operating criteria or integrity, and alternative treatment operating criteria, if operation in accordance with the criteria or requirements is not restored within four hours. The ground water system must notify the Department as soon as possible, but in no case later than the end of the next business day. . .

XV.

By failing to have certified operators for water treatment and distribution, the Respondent violated Rules 0400-45-09-.04 and 0400-45-01-.17(1)(d).

Rule 0400-45-09-.04 states, in pertinent part:

(1) . . .
(2) Each person in direct charge at a water treatment plant, a wastewater treatment plant, a water distribution system, or a wastewater collection system shall hold a certificate in a grade equal to or higher than the grade of the treatment plant, distribution system, or collection system he/she operates. The grade of a facility will be established by the criteria set forth in this chapter of rules.
(3) All operating personnel making process control/system integrity decisions about water quality or quantity that affect public health must be certified. A designated certified operator must be available for each operating shift. . .

Rule 0400-45-01-.17(1)(d) states:

(d) Because the proper operation and maintenance of water systems is critical to a system's ability to provide safe water to the public and to comply with these rules,

all water supply systems must comply with the provisions of Chapter 0400-49-01. A violation of those rules is a violation of this rule as well.

ORDER and ASSESSMENT

XVI.

Pursuant to the Act, Tenn. Code Ann. §§ 68-221-705 and -712, the Respondent is issued the following Order and Assessment ("Order"). This case number, DWS23-0190, should be written on all correspondence concerning this matter. All documentation and submittals relating to compliance schedule items should be sent electronically to DWRWater.Compliance@tn.gov or in duplicate to both addresses below:

Michael Atchley, Manager
Knoxville Environmental Field Office
Division of Water Resources
3711 Middlebrook Pike
Knoxville, Tennessee 37921

AND

Jessica Murphy, Manager
Enforcement and Compliance Unit
Division of Water Resources
William R. Snodgrass Tennessee Tower
312 Rosa L. Parks Ave., 11th Floor
Nashville, Tennessee 37243

All payments shall be submitted to:

Treasurer, State of Tennessee
Division of Fiscal Services, Consolidated Fees
TN Department of Environment and Conservation
William R. Snodgrass Tennessee Tower,
312 Rosa L. Parks Ave., 10th Floor
Nashville, Tennessee 37243

(1) **The Respondent shall pay $12.40 in damages to the Division on or before the thirty-first day after receipt of this Order.**

(2) The Respondent is assessed a total civil penalty of $ 25,530.00. **The Respondent shall pay $ 5,106.00, which is the upfront portion of the total civil penalty, on or before the thirty-first day after receipt of this Order.** The Respondent shall

pay the remaining $20,424.00 only if the Respondent fails to comply with the following corrective action items.

(3) Within 60 days of the receipt of this Order, the Respondent shall submit standard operating procedures (SOP) for the water treatment plant, which shall include grab sampling as required with breakdown of equipment, including the maximum allowable timeframe grab sampling is allowed. The Respondent shall pay a penalty of $1,500.00 for the failure to timely submit the SOP, payable within 30 days of the Division's demand for payment.

(4) The Respondent shall pay $1,250.00 for each month that there is a failure to demonstrate via continuous chlorine analyzer, and grab sampling as required by Rule, that the water provided to its customers meets 4-log treatment of viruses, 0.2 ppm chlorine residual leaving the water treatment plant, and 0.2 ppm throughout the distribution system, not to exceed $ 5,000.00, payable within 30 days of the Division's demand for payment.

(5) The Respondent shall pay $1,000.00 for each failure to notify the Division of a major breakdown or failure of equipment in the water treatment process within 48 hours, not to exceed $ 5,000.00, payable within 30 days of the Division's demand for payment.

(6) The Respondent shall pay $250.00 for the failure to take the required number of 9 bacteriological samples and chlorine residuals each month, not to exceed $1,000.00, payable within 30 days of the Division's demand for payment.

(7) The Respondent shall maintain the services and availability of certified operators for both the water treatment and distribution operators in direct charge. The

Respondent shall pay $2,000.00 for the failure to obtain operator services within 30 days of the absence of an operator and shall pay $5,924.00 for the failure to obtain operator services after the absence of an operator for more than 60 days, payable within 30 days of the Division's demand for payment.

The Director may, for good cause shown, extend the compliance dates contained within this Order and Assessment. To be eligible for this time extension, the Respondent shall submit a written request to be received in advance of the compliance date. The written request must include sufficient detail to justify such an extension and include at a minimum the anticipated length of the delay, the precise cause or causes of the delay, and all preventive measures taken to minimize the delay. Any such extension by the Director will be in writing. Should the Respondent fail to meet the requirement by the extended date, an associated civil penalty shall become due 30 days thereafter.

Failure to comply with any of the requirements of this Order and Assessment could lead to further enforcement actions, which may include additional civil penalties, assessment of damages, and/or recovery of costs.

This Order and Assessment shall be considered closed no later than two years after the Order becomes effective, provided all requirements of the Order and Assessment have been met, any outstanding penalties have been paid, and Respondent is in substantial compliance with the Act.

RESERVATION OF RIGHTS

In issuing this Order and Assessment, the Department does not implicitly or expressly waive any provision of the Act or the regulations promulgated thereunder or the authority to assess

costs, civil penalties, and/or damages incurred by the State against the Respondent. The Department expressly reserves all rights it has at law and in equity to order further corrective action, assess civil penalties and/or damages, and to pursue further enforcement action including, but not limited to, monetary and injunctive relief. Compliance with this order will be considered as a mitigating factor in determining the need for future enforcement action.

NOTICE OF RIGHTS

The Respondent may appeal this Order. Tenn. Code Ann. §§ 68-221-712 and 68-221-713. To do so, a written petition setting forth the reasons for requesting a hearing must be received by the Commissioner within 30 days of the date the Respondent received this Order and Assessment, or this Order and Assessment will become final.

If an appeal is filed, an initial hearing of this matter will be conducted by an Administrative Law Judge (ALJ) as a contested case hearing. Tenn. Code Ann. § 68-221-714; Tenn. Code Ann. § 4-5-301 to -326 (the Uniform Administrative Procedures Act); Tenn. Comp. R. & Regs. 1360-04-01 (the Department of State's Uniform Rules of Procedure for Hearing Contested Cases Before State Administrative Agencies). Such hearings are legal proceedings in the nature of a trial. Individual Respondents may represent themselves or be represented by an attorney licensed to practice law in Tennessee. No one may represent another person in a contested case proceeding unless they are an attorney licensed to practice law in Tennessee. Governments and artificial persons (corporations, limited partnerships, limited liability companies, etc.) cannot engage in the practice of law and therefore may only pursue an appeal through an attorney licensed to practice law in Tennessee. Low-income individuals may be eligible for representation at reduced or no cost through a local bar association or legal aid organization.

At the conclusion of any initial hearing, the ALJ has the authority to affirm, modify, or deny the Order. Furthermore, the ALJ on behalf of the Board has the authority to assess additional damages incurred by the Department including, but not limited to, all docketing expenses associated with the setting of the matter for a hearing and the hourly fees incurred due to the presence of the ALJ and a court reporter.

Any petition for review must be directed to the Commissioner of the Department of Environment and Conservation, c/o Jenny L. Howard, General Counsel, William R. Snodgrass Tennessee Tower, 312 Rosa L. Parks Avenue, 2nd Floor, Nashville, Tennessee 37243. An appeal may also be filed by sending the petition to the following email address: TDEC.Appeals@tn.gov. Attorneys should contact the undersigned counsel of record. **The case number, DWS23-0190, should be written on all correspondence regarding this matter.**

Issued by the Director of the Division of Water Resources, Department of Environment and Conservation, on this 19th day of March, 2024.

Jennifer Dodd (Mar 19, 2024 21:31 CDT)

Jennifer Dodd
Director, Division of Water Resources
Department of Environment and Conservation

Reviewed by:

Samantha Buller-Young
Samantha Buller-Young (Mar 12, 2024 09:44 EDT)

Samantha Buller-Young
BPR # 040466
Assistant Counsel
Department of Environment & Conservation
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Samantha.Buller-Young@tn.gov

COPY

FILED
MAR 19 2026
TIME 2:00
TERESA A. CHOATE
CLERK & MASTER MONROE CTY.

EXHIBIT 3

Petition

The Town of Tellico Plains
v.
TDEC and the Board of Water Quality, Oil & Gas

STATE OF TENNESSEE
DEPARTMENT OF ENVIRONMENT & CONSERVATION
UNIFORM GUIDANCE FOR THE
CALCULATION OF CIVIL PENALTIES

I. INTRODUCTION

This document, establishes uniform guidance for the calculation of civil penalties by divisions within the Tennessee Department of Environment and Conservation ("TDEC" or the "Department").

The goal of TDEC's compliance assurance and enforcement programs is to attain and maintain a high rate of compliance within the regulated community. This goal is accomplished through comprehensive monitoring and inspection programs and by addressing the more serious violators with timely, visible, and effective enforcement actions. A timely and appropriate enforcement action should return the violator to compliance as expeditiously as possible, as well as deterring future or potential non-compliance.

II. PURPOSE AND SCOPE

The purpose of this guidance is to ensure that civil penalties are assessed in a fair and consistent manner, that the penalties are appropriate for the seriousness of the violation, that economic incentives for non-compliance are eliminated, that persons are deterred from committing violations, and that compliance is achieved.

This document outlines the penalty calculation process and allows divisions to be consistent across the department, within the limits of state environmental laws and Department rules. Each Division within the Bureau of Environment may establish its own policy on the calculation of penalties provided such procedures are consistent with this policy. Significant deviations from this guidance must be approved in writing by the Commissioner.

A civil penalty may consist of an "upfront" cash component, which is due according to the schedule specified in the Order, and may also include a "contingent" component, which is waived if the respondent meets specified conditions of the Order. To the extent practicable, the upfront civil penalty should remove any known economic benefit which the facility may have enjoyed during the period of non-compliance and encourage compliance by having non-compliance cost more than compliance. The purpose of a contingent penalty is to provide an incentive for the respondent to correct the violations

or take remedial actions within the specified timelines. If the respondent misses the compliance dates specified in the Order, the contingent penalties become due.

III. DISCLAIMER

This penalty calculation guidance is intended solely for the support of TDEC personnel. It is not intended, and cannot be relied upon, to create rights, substantive or procedural, enforceable by any party in litigation with the Department. The Department reserves the right to act at variance with this policy and to change it at any time without public notice. This policy is in no way intended to limit the penalty amounts sought in civil judicial actions or to limit the actions or penalty amounts that may be assessed by any of the state environmental regulatory boards.

Where a conflict may exist between the contents of this guidance and the rules, regulations, and statutes enforceable by TDEC, the provisions of the rules, regulations, and statutes shall take precedence. The contents of this guidance may be supplemented by divisional policies and guidance.

IV. LEGAL AUTHORITY TO ASSESS PENALTIES

The statutory authority for the assessment of civil penalties and the factors/matters the Commissioner or Secretary may consider in assessing a penalty are set out in the Tennessee Code Annotated. The pertinent sections are outlined in the table below:

Title	Statute	Language
Solid Waste Disposal Act (SWDA)	Tennessee Code Annotated §68-211-117(a)(1)	Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to a civil penalty of not less than one hundred dollars ($100) nor more than five thousand ($5,000) per day for each day of violation; provided, however, that if the violation involves the disposal of solid waste in a sinkhole, it shall be subject to a civil penalty of not less than seven hundred dollars ($700) nor more than seven thousand dollars ($7,000) per day for each day of violation because of the increased likelihood of harm to the environment and the public.
	§§ 68-211-117 (c),(d)	(c) In assessing a civil penalty, the following factors may be considered: (1) The harm done to public health or the environment; (2) The economic benefit gained by the violators; (3) The amount of effort put forth by the violator to attain compliance; and (4) Any unusual or extraordinary enforcement costs incurred by the commissioner. (d) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.

		Hazardous Waste Management Act of 1983 (HWMA) –
Hazardous Waste Management Act of 1983 (HWMA)	Tennessee Code Annotated §§68-212-114(b)(1), (c)(1)	68-212-114(b)(1) Any person who violates or fails to comply with any provision of this part, any order of the board or commissioner, the terms or conditions of any permit issued, or any rule, regulation or standard adopted pursuant to this part shall be subject to a civil penalty of up to fifty thousand dollars ($50,000) per day for each day of violation. Each day upon with such violation occurs constitutes a separate punishable offense, and such person shall also be liable for any damages to the state resulting therefrom. 68-212-114(c)(1) Any person who violates or fails to comply with any provision of this part or any rule, regulation, or standard adopted pursuant to this part shall be subject to an administrative penalty not to exceed one thousand dollars ($1,000) per violation, with each day such violation continues constituting a separate punishable offense.
	§ 68-212-213(b)	(b) In assessing a civil penalty, the following factors may be considered: (1) The harm done to the public health or the environment; (2) The economic benefit gained by the violators; (3) The amount of effort put forth by the violator to obtain compliance; and (4) Any unusual or extraordinary enforcement costs incurred by the commissioner.
Petroleum Underground Storage Tank Act (PUSTA)	Tennessee Code Annotated §68-215-121(a)	Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner or board, any rule, regulation or standard pursuant to this chapter shall be subject to a civil penalty not to exceed ten thousand dollars ($10,000) per day for each day of violation. This civil penalty may be assessed by the commissioner, the board or the court. Each day such violation continues constitutes a separate punishable offense, and such person is also be liable for any damages to the state resulting therefrom. In deciding whether to assess a civil penalty and determining the amount of such assessment, the commissioner, board, or court may consider all of the circumstances surrounding the violation, including the past compliance history of the violator, the degree of the risk posed to the environment by the violation, as well as the factors enumerated in subsection (c).
	§§ 68-215-121(c),(d)	(c) In assessing a civil penalty, the following factors may be considered: (1) The harm done to the public health and/or the environment; (2) The economic benefit gained by the violator through noncompliance; (3) The amount of effort put forth by the violator to obtain compliance; and (4) Any unusual or extraordinary enforcement costs incurred by the commissioner, including compensation for loss or destruction of wildlife, fish, and any aquatic life resulting from the violation. (d) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this chapter and in restoring the air, water,

		land, and other property, including the replacement of animal, plant, and aquatic life destroyed due to the violation.
Air Quality Act (AQA)	Tennessee Code Annotated § 68-201-116(b)(1)	In addition to the criminal penalties of § 68-201-112, any person who violates or fails to comply with any provision of this part or any rule, regulation, ordinance, or standard adopted pursuant to this part shall be subject to a civil penalty of up to twenty-five thousand dollars ($25,000) per day for each day of violation. Any person against whom an assessment in excess of ten thousand dollars ($10,000) for each violation has been issued by a local pollution control program pursuant to this section may petition the technical secretary for de novo review of the assessment under the provisions of this section. The technical secretary shall render an initial determination, and that initial determination may be appealed to the board pursuant to this section. Each day such violation continues constitutes a separate punishable offense, and such person shall also be liable for any damages to the state resulting from the continued violation.
	§ 68-201-106	Matters to be considered in exercising powers. — Nothing in this part shall be deemed to grant the board or department any jurisdiction or authority with respect to air pollution existing solely within commercial or industrial plants, works or shops or to affect the relations between employers and employees with respect to or arising out of any condition of air pollution. In exercising powers to prevent, abate and control air pollution, the board or department shall give due consideration to all pertinent facts, including, but not necessarily limited to: (1) The character and degree of injury to, or interference with, the protection of the health, general welfare and physical property of the people; (2) The social and economic value of the air contaminant source; (3) The suitability or unsuitability of the air pollution source to the area in which it is located. In this respect it is expressly anticipated that the board may establish zones and categories of air contaminant sources in which the standards, rules and regulations may differ according to zone and category of air contaminant source; (4) The technical practicability and economic reasonableness of reducing or eliminating the emission of such air contaminants; (5) The economic benefit gained by the air contaminant source through any failure to comply with provisions of this part and regulations promulgated thereunder; and (6) The amount or degree of effort put forth by the air contaminant source to attain compliance.
Radiological Health Service Act (RHSA)	Tennessee Code Annotated § 68-202-212(b)	Any person who violates or fails to comply with any provision of this part, any order issued in accordance with this part, or any rule, regulation, or standard adopted pursuant to this part, or who fails to pay a lawfully levied fee is subject to a civil penalty of not less than one hundred dollars ($100) and not more than five thousand ($5,000) per day for each day of violation. Each day such violation continues constitutes a separate violation, and such person is also liable for any damages to the state resulting from such violations.

	§§ 68-202-212(c)(2),(3)	(2) In assessing a civil penalty, the following factors may be considered: (A) The harm or potential harm done to the public or the environment; (B) The economic benefit gained by the violators; (C) The amount of effort put forth by the violator to attain compliance; (D) Any unusual or extraordinary enforcement cost incurred by the state; and (E) The need for an economic deterrent from future violations. (3) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, and in restoring the air, water, land and other property, including animal, plant and aquatic life of the state to their former condition.
Safe Drinking Water Act (SDWA)	Tennessee Code Annotated § 68-221-713(a)	(1) Any person who violates or fails to comply with any provision of this part, any order of the commissioner or the board issued pursuant to this part or any rule, regulation, or standard adopted pursuant to this part is subject to a civil penalty of not less than fifty dollars ($50.00) nor more than five thousand ($5,000) per day for each day of violation. (2) Each day such violation continues constitutes a separate violation. (3) In addition, such person shall also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.
	§§ 68-221-713(d),(e)	(d) In assessing a civil penalty, the following factors may be considered: (1) The harm done to the public health or the environment; (2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity; (3) The economic benefit gained by the violator; (4) The amount of effort put forth by the violator to remedy this violation; (5) Any unusual or extraordinary enforcement costs incurred by the commissioner; and (6) The amount of penalty set by the board for specific categories of violations. (e) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this part, or any other actual damages caused by the violation.
Tennessee Water Quality Control Act (TWQCA)	Tennessee Code Annotated §§ 69-3-115(a)(1), (a)(4)(c)	69-3-115(a)(1) Any person who does any of the following acts or omissions is subject to a civil penalty of up to ten thousand dollars ($10,000) per day for each day during which the act or omission continues or occurs: (A) Violates an effluent standard or limitation or a water quality standard established under this part; (B) Violates the terms or conditions of a permit; (C) Fails to complete a filing requirement or causes false information to be filed with the department; (D) Fails to allow or perform an entry, inspection, monitoring, or reporting requirement; (E) Violates a final determination or order of the board, panel or commissioner; (F) In the case of an industrial user of a publicly owned

		treatment works, fails to pay user or cost recovery charges or violates pretreatment standards or toxic effluent limitations established as a condition in the permit of the treatment works; (G) After reasonable notice and opportunity to restore a ditch constructed pursuant to § 69-3-130, the owner of the property fails to restore the ditch to permit specifications; or (H) Violates any other provision of this part or any rule or regulation promulgated by the board. 69-3-115(a)(4)(c) Any person who willfully and knowingly falsifies any records, information, specifications, or other data required by the board or the commissioner, or who willfully and knowingly pollutes the waters of the state, or willfully fails, neglects or refuses to comply with any of the provisions of this part commits a Class E felony and shall be punished by a fine of not more than twenty-five thousand dollars ($25,000) or incarceration, or both.
	§§ 69-3-115(a)(3),(4)	(3) In assessing the civil penalty, the commissioner may consider the following factors: (A) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity; (B) Damages to the state, including compensation for loss or destruction of wildlife, fish, and other aquatic life, resulting from the violation, as well as expenses involved in enforcing this section and the costs involved in rectifying any damage; (C) Cause of the discharge or violation; (D) The severity of the discharge and its effect upon the quality and quantity of the receiving waters; (E) Effectiveness of action taken by the violator to cease the violation; (F) The technical and economic reasonableness of reducing or eliminating the discharge; (G) The social and economic value of the discharge source; and (H) The economic benefit gained by the violator. (4) The board may establish by regulation a schedule of the amount of civil penalty that can be assessed by the commissioner for certain specific violations or categories of violations.
Tennessee Water Wells Act	Tennessee Code Annotated § 69-10-110(d)	(d) Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner issued pursuant to this chapter, or any rule, regulation, or standard adopted pursuant to this chapter shall be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than five thousand ($5,000) per day for each day of violation. Each day such violation continues is a separate violation. In addition, such person shall also be liable for any damages to the state resulting from the violation, without regard to whether any civil penalty is assessed.
	§§ 69-10-110(f)(g)	(f) In assessing a civil penalty, the following factors may be considered: (1) The harm done or potential for harm to the public health or the environment; (2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity; (3) The economic benefit gained by the violator;

		(4) The amount of effort put forth by the violator to remedy this violation; and (5) Any unusual or extraordinary enforcement costs incurred by the commissioner. (g) Damages to the state may include any reasonable expenses incurred in investigating and enforcing violations of this chapter, or any other actual damages caused by the violation.
Water Environmental Health Act	Tennessee Code Annotated § 68-221-904 (c)	(c) (1) Additionally, any municipality, utility district, corporation or persons violating any provisions of this part, or the rules and regulations adopted thereunder, shall be subject to civil penalties up to ten thousand dollars ($10,000) per day, for each day during which the violation occurs. (2) The commissioner has the duty and authority to levy these civil penalties, and the duty and authority to issue orders requiring compliance with this part.
Tennessee Safe Dams Act	Tennessee Code Annotated § 69-11-121(a)	(a) Any person who violates or fails to comply with any provision of this chapter, any order of the commissioner issued pursuant to this chapter, or any rule, regulation, or standard adopted pursuant to this chapter shall be subject to a civil penalty of not less than fifty dollars ($50.00) nor more than five thousand ($5,000) per day for each day of violation. Each day such violation continues shall constitute separate violation. In addition, such person shall also be liable for any damages to the state resulting from the violation, without regard to whether any civil penalty is assessed.
	§ 69-11-121(d)	(d) In assessing a civil penalty, the following factors may be considered: (1) The harm done or potential for harm to the public safety or the environment; (2) Whether the civil penalty imposed will be a substantial economic deterrent to the illegal activity; (3) The economic benefit gained by the violator as a result of the violation; (4) The amount of effort put forth by the violator to remedy this violation; or (5) Any unusual or extraordinary enforcement costs incurred by the commissioner.

V. PENALTY CALCULATION PROCESS

The method for calculating penalties consists of the following steps, calculated for each violation or class of violations of the statute or of the regulations:

(1) Determine a gravity-based penalty amount for a violation from the Gravity Based Penalty Matrix,

(2) Add a "multi-day" component, where appropriate, in consideration of the duration of the violations,

(3) Adjust the sum of the gravity-based and multi-day components to reflect case-specific circumstances, if warranted (good-faith credit, negligence, history of non-compliance, etc.),

(4) Add any economic benefit realized by the facility through non-compliance.

The formula for penalty calculation is as follows:

Penalty Amount = Gravity-based component + Multi-day component
+ or – Adjustments + Economic Benefit

A. Determination of a Gravity-Based Penalty

Cite each violation separately [provide statute and/or regulation number, and text of same], and for each violation, perform the following steps:

1. Establish which factors to consider in the pertinent environmental statute (see table, section IV). The factors and specific language vary, depending on the statute.

The gravity based penalty considers the statutory factors that include harm or injury to public health or the environment, and harm to citizens' general welfare and property.

2. Determine whether the harm to public health and/or the environment is major, moderate, or minor.

In determining harm, some of the factors to be considered include, but are not limited to:

a. Evidence of release.
b. Evidence of mismanagement.
c. Adequacy of monitoring equipment, inspection procedures.
d. Ability to prevent or detect releases.
e. Quantity of release.
f. Toxicity of release.
g. Potential/actual transport or migration of release by way of air, surface water, groundwater.
h. Existence, size and proximity of receptors (workers, residents, fish, wildlife, sensitive environmental media such as wetlands, sole source aquifer, surface waters).
i. Violation(s) of a permit requirement.
j. Registration and/or certification lapses.

3. Determine whether the extent of deviation from the statutory or regulatory requirements is major, moderate, or minor.

4. **Using the factors above, go to the penalty matrix and find the appropriate gravity-based penalty range.**

It is recommended that the case manager use the low-end range on the gravity-based penalty table in the preliminary penalty determination for each violation prior to making adjustments.

Unless the low end range of the gravity-based penalty from the table is used, the case manager should document the rationale for a higher civil penalty that is not duplicated by any subsequent adjustments.

Ultimately, the selection of the exact penalty amount within each cell range is based upon the discretion and judgment of the case manager and the Division Director in any given case. In selecting a dollar amount from the range, it is appropriate to consider such factors as: a) the seriousness of the violation relative to other violations falling within the same matrix, b) the size and sophistication of the violator, and c) other relevant factors.

Note that several of the environmental statutes carry a "not less than" provision. Any calculated penalty amount must comply with those minimums.

PENALTY MATRIX FOR GRAVITY-BASED COMPONENT

	Extent of Deviation From Requirement		
Potential For Harm	Major	Moderate	Minor
Major	100% to 80%	80% to 60%	60% to 44%
Moderate	44% to 32%	32% to 20%	20% to 12%
Minor	12% to 6%	6% to 2%	2% to 1%

* percentages in table are % of statutory maximum for each program area

B. Adding a Multi-Day Component

For each violation that has continued for more than one day, the decision should be made whether to pursue multi-day penalties. Continuing violations should be documented either by observation and testing in the field, through self-reporting by the respondent, or by demonstrating that the respondent failed to take an action required by statutory or regulatory guideline, or other mechanism containing a compliance date.

To calculate the multi-day component of the penalty, locate the proper cell in the Multi-Day Penalty Matrix. Then multiply a dollar amount selected from the cell by the number of days the violation lasted, minus one day (one day is subtracted because the first day penalty is higher and is selected from the Gravity-Based Penalty Matrix). This amount is then added to the amount selected for the first day of violation from the Gravity-Based Penalty Matrix. While this policy provides general guidance on the use of multi-day penalties, nothing in this policy precludes the assessment of penalties up to each program's statutory maximum for each day after the first day of any given violation.

MULTI-DAY PENALTY CALCULATION MATRIX

	Extent of Deviation from Requirement		
Potential for Harm	Major	Moderate	Minor
Major	20% to 4%	16% to 3%	12% to 2%
Moderate	8% to 1.6%	6.4% to 1%	4% to 0.6%
Minor	2.4% to 0.4%	1.2% to 0.4%	0.4%

* percentages in table are % of statutory maximum for each program area

Compression of Violations

At the discretion of the Division Director, violations may be compressed, that is, where violations flow from one basic violation, or where violations are similar, those violations may be grouped together and treated as one violation. Examples include:

1. Where a facility fails to install a groundwater monitoring system, taking quarterly samples would be a violation, but the facility would have been unable to comply without first having the groundwater monitoring system installed. Therefore, any violations related to the groundwater monitoring system had it been installed as required, may be grouped under one violation – failure to install a groundwater monitoring system.

2. If a facility fails to obtain permit coverage under a general permit or permit-by-rule, it may also be in violation of some or all of the permit requirements. Any violations besides the failure to notify and obtain permit coverage may be compressed and grouped together for determining penalty calculations.

Compressing violations is discretionary. As long as the total penalty for all related violations is appropriate considering the gravity of the offense, is sufficient to deter similar future behavior, and economic benefit is recovered, the compression of violations is acceptable.

C. Adjustments to Initial Penalty

Adjustment factors can increase or decrease the penalty amount calculated from the matrices, dependent upon the facts of each case. Adjustments (increases or decreases) for good-faith efforts to comply, for negligence/willfulness, or for history of non-compliance should be applied to the sum of the Gravity-Based and the Multi-Day components, before the addition of any economic benefit amount. Divisions may also consider statute-specific[†] factors when making adjustments to the base penalty. More than one adjustment factor may apply in a case; however, after all adjustment factors have been applied, the resulting penalty shall not exceed the statutory maximum per day of violation.

A facility can demonstrate good faith by promptly identifying and reporting noncompliance or by instituting measures to remedy the violation before the Department detects the violation. In other words, good faith may be shown through the action and deeds of a facility in attempting to come into compliance, rather than its inaction. Examples of good faith are often case specific. Such good faith may allow the gravity-based penalty to be decreased up to 50%.

In contrast, the gravity-based penalty may be increased up to 50% upon a showing of willfulness and/or negligence. Factors to consider in determining willfulness or negligence include, but are not limited to:

1. How much control the violator had over the events constituting the violation.
2. Whether the violator could have foreseen the events resulting in the violation.
3. Whether the violator took reasonable precautions to prevent the violation.
4. Whether the violator knew or should have known of the hazards associated with the conduct.
5. Whether the violator knew or should have known of the legal requirement which was violated.

The penalty may be increased up to 50% upon a showing that the facility has a history of non-compliance. Where a respondent has previously violated a program's regulations, this is clear evidence that the respondent was not deterred by the previous enforcement action. Factors to consider in establishing a history of non-compliance include, but are not limited to:

[†] For example, the social and economic value of the discharge source, the suitability of the pollutant source to the area in which it is located, the technical and economic reasonableness of reducing/eliminating the discharge, the cause of the discharge or violation, the amount of penalty set by the board for specific categories of violations, and whether the penalty will be an economic deterrent to future violations.

1. How much control the violator had over the events constituting the violation.
2. Similarity to the previous violation(s).
3. When the previous violation(s) occurred. [How recent?]
4. Number of previous violations.
5. Respondent's response to previous violations.

Only documented violations should be considered when evaluating a history of non-compliance. Documentation may include inspection reports, self-monitoring reports, photographs, notices of violation, and formal enforcement actions.

D. Adding Economic Benefit Gained Through Non-Compliance

On September 27, 2005, the Department adopted the policy of recovering costs for economic benefit gained by regulated entities from non-compliance with environmental statutes. In 2006 the Department developed a revised economic benefit model based on the EPA "BEN" model known as the BEN-TN model. The recovery of economic benefit in administrative Orders is critical to leveling the playing field among all regulated entities. The primary goal of economic benefit recovery is to remove the cost savings associated with delayed or avoided pollution control expenditures or other compliance costs, and thus convince regulated entities that it is in their best interest to pay the cost of compliance on time, rather than to delay the cost only to eventually pay the cost of compliance plus the cost of a penalty. If the Department is to effectively achieve deterrence, any significant economic benefit resulting from failure to comply with the law should be recovered.

Delayed Costs versus Avoided Costs

Non-compliance can yield an economic benefit in one of two ways: delayed costs and avoided costs.

Delayed costs are expenditures which have been deferred due to the respondent's failure to comply with the regulations. The respondent eventually will have to incur the costs in order to achieve compliance. However, during the period of non-compliance, the respondent realized an economic gain because it did not have to borrow money for that period in order to purchase equipment and/or supplies necessary to achieve compliance.

Avoided costs include normal operating and maintenance costs as well as any periodic annual costs, monitoring, sampling, and analysis costs that the violator should have incurred, but did not, resulting in or contributing to the non-compliance.

Alternative Method for Calculating Economic Benefit

In cases where the BEN-TN model cannot realistically compute actual economic benefit, Divisions may use an alternative method, provided it is documented and defensible.

E. Adding Unusual or Extraordinary Costs Incurred by The Department

The collection of "damages" reflects the extra time and effort that Division personnel must expend when formal enforcement must be pursued. On August 21, 2006, TDEC developed a document titled "Uniform Guidance for the Assessment of Damages" (copy attached). That guidance states that each Division within the Bureau of Environment may establish its own policy on the assessment of damages, provided it is consistent with the guidance, which lists state personnel hours, vehicle mileage, and laboratory costs as examples of collectible charges.

F. Natural Resource Damages

Certain environmental statutes authorize the Department to include in the penalty assessment the following: compensation for loss or destruction of wildlife, fish and aquatic life; costs associated with restoring the air, water, land and other property to their former condition; and other actual damages caused by the violation. Natural resource damages should be reviewed in all cases that result in a temporary or permanent loss of resources.

This guidance is effective the 23 day of May, 2011.

Robert J. Martineau, Jr., Commissioner

TENNESSEE DEPARTMENT OF ENVIRONMENT & CONSERVATION

UNIFORM GUIDANCE FOR THE ASSESSMENT OF DAMAGES[1]

I. GENERAL PURPOSE

1. This guidance is for the enforcement coordinators and enforcement staff within the Bureau of Environment.

2. This document is intended to provide uniform guidance for the assessment of damages in ENFORCEMENT ACTIONS.

3. Assessing damages will enable the department to recoup its actual costs incurred during conducting an investigation and carrying out an enforcement action.

II. DEFINITION

Damages are expenses that are above and beyond those incurred during routine inspections, compliance monitoring, and administrative expenses that are not offset by fees[2]. These expenses include, but are not limited to, staff time, vehicle mileage, and any sampling and analytical costs.

II. LEGAL AUTHORITY TO ASSESS DAMAGES

Title	Statute	Language
Solid Waste Disposal Act (SDWA)	Tennessee Code Annotated §§68-211-117(a)(2),(d)	68-211-117(a)(2) states: Each day such violation continues constitutes a separate violation. In addition, such person shall *also be liable for any damages to the state resulting therefrom, without regard to whether any civil penalty is assessed.* 68-211-117(d) clarifies by stating: Damages to the state *may include any reasonable expenses incurred in investigating and enforcing violations of this part,* and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.
Hazardous Waste Management Act (HWMA)	Tennessee Code Annotated §§68-212-114(b)(1),(b)(4)	68-212-114(b)(1) states in pertinent part: Each day upon which such violation occurs constitutes a separate punishable offense, and each such person shall *also be liable for any damages to the state resulting therefrom.* 68-212-114(b)(4) clarifies: Damages to the state *may include any reasonable expenses incurred in investigating and enforcing violations of this part,* and in restoring the air, water, land and other property, including animal, plant and

1 This guidance does not address the assessment of natural resource damages.

2. An exception to this general guidance is made for major air emission sources, as the workload analysis and fee reflects some level of enforcement. However, even with these major sources, damages can still be applied to items such as hearing costs (ALJ and court reporter time) that are out-of-pocket expenses and not related to staff time.

		aquatic life, of the state to their former condition.
Title	**Statute**	**Language**
Petroleum Underground Storage Tank Act (PUSTA)	Tennessee Code Annotated §§68-215-121(a)(1),(d)	68-215-121(a)(1) states in pertinent part: Each day such violation continues constitutes a separate punishable offense, and such person is also *liable for any damages to the state resulting therefrom.* 68-215-121(d): Damages to the state *may include any reasonable expenses incurred in investigating and enforcing violations of this chapter* and in restoring the air, water, land, and other property, including the replacement of animal, plant, and aquatic life destroyed due to the violation.
Air Quality Act (AQA)	Tennessee Code Annotated §§68-201-106; 68-201-116(b)(1),(c)	68-201-116(b)(1) states in pertinent part: Each day such violation continues constitutes a separate punishable offense, and such person shall also *be liable for any damages to the state resulting therefrom.* 68-201-116(c) clarifies: In assessing such civil penalty, the factors specified in 68-201-106 may be considered. Damages to the state or respective municipality or *county may include any expenses incurred in investigating the enforcing of this part,* in removing, correcting, or terminating the effects of air pollution and also compensation for any expense, loss or destruction of plant or animal life or any other actual damages or clean-up expenses caused by the pollution or by the violation.
Radiological Health Services Act (RHSA)	Tennessee Code Annotated §§68-202-212(b),(c)(3)	68-202-212(b): Each day such violation continues constitutes a separate violation, and such person is also *liable for any damages to the state resulting from such violations.* 68-202-212(c)(3): Damages to the state may *include any reasonable expenses incurred in investigating and enforcing violations of this part,* and in restoring the air, water, land and other property, including animal, plant and aquatic life, of the state to their former condition.
Tennessee Water Quality Control Act (TWQCA)	Tennessee Code Annotated §§69-3-116(a),(c)	69-3-116(a): *The commissioner may assess the liability of any polluter or violator for damages* to the state resulting from any person's pollution or violation, failure, or neglect in complying with any rules, regulations, or standards of water quality promulgated by the board or permits or orders issued pursuant to the provisions of this part. 69-3-116(c): *Damages may include any expenses incurred in investigating and enforcing this part,* in removing, correcting, and terminating any pollution, and also compensation for any loss or destruction of wildlife, fish, or aquatic life and any other actual damages caused by the pollution or violation.
Tennessee Safe Drinking Water Act (SDWA)	Tennessee Code Annotated §§68-221-713(a)(3),(e)	68-221-713(a)(3): In addition, such person shall also be *liable for any damages to the state* resulting therefrom, without regard to whether any civil penalty is assessed. 68-221-713(e): Damages to the state *may include any reasonable expenses incurred in investigating and enforcing violations of this part,* or any other actual damages caused by the violation.
Tennessee Water Wells Act	Tennessee Code Annotated §§69-10-110(a),(g)	69-10-110(a) states in pertinent part: . Each day such violation continues is a separate violation. In addition, such person shall also be *liable for any damages to the state* resulting from the violation, without regard to whether any civil penalty is assessed. 69-10-110(g): Damages to the *state may include any reasonable expenses incurred in investigating and enforcing violations of this part,* or any other actual damages caused by the violation.

Tennessee Safe Dams Act	Tennessee Code Annotated §§69-11-121(a)	69-11-121(a) states in pertinent part: In addition, such person shall *also be liable for any damages to the state* resulting from the violation, without regard to whether any civil penalty is assessed.

III. ASSESSMENT OF DAMAGES

Current actual salary + benefits dollar amounts should be obtained from the Division of Human Resources for each employee involved in the investigation. The calculated hourly rate should be multiplied by the number of hours the employee spent on the enforcement matter.

Add the amount of $3.13/hour for each hour of employee time to cover overhead costs, including printing, supplies, rent, equipment, and internal professional services. This amount is derived from the Tennessee Environmental Streamlining Agreement between the Tennessee Department of Environment and Conservation, the Tennessee Department of Transportation, and the US Department of Transportation Federal Highway Administration signed and effective December 9, 2013.

Unless accurate vehicle expenses can be obtained for state-owned vehicles, the current mileage reimbursement rate may be used. That cost per mile should be multiplied by the actual number of miles logged on the vehicle. If an employee used their personally-owned vehicle, the amount the state reimbursed the employee should be included in the damages assessment.

Other reasonable expenses that may be included in the damages assessment include, but are not limited to: sampling and laboratory analysis costs; and certified mail and personal service of process costs.

Divisions will tabulate damages in an attachment to the Civil Penalty Calculation worksheet and include all documentation in the enforcement case record.

IV. GENERAL PROVISIONS

1. Each Division within the BOE may establish its own policy on the assessment of damages provided such procedures are consistent with this guidance. Significant deviations from this guidance must be approved in writing by the Commissioner.

2. The procedures set out in this guidance are intended as guidance for Department enforcement staff. They are not intended and cannot be relied upon to create rights,

substantive or procedural, enforceable by any party involved in enforcement proceedings or matters of litigation with the Department. The Department reserves the right to act in variance with this guidance and to change it at any time without public notice. This guidance is in no way intended to limit the damages amounts sought in civil judicial actions or to limit the actions or damages amounts that maybe assessed by any state environmental regulatory board. Where a conflict may exist between this guidance and the rules, regulations, and statutes enforceable by the Department, the provisions of the rules, regulations, and statutes shall take precedence.

This guidance is effective the 31 day of May, 2016.

Robert J. Martineau, Jr., Commissioner